[redacted]

SUPREME COURT OF THE [redacted]

[redacted]

No. [redacted]

CHICAGO, MILWAUKEE [redacted] RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE PUBLIC UTILITIES COMMISSION OF [redacted] ILLINOIS.

IN ERROR TO THE SUPREME COURT OF [redacted]

[redacted]

(24,770)

(24,776)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 495.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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* * * * * * *

1-5 Railroad and Warehouse Commission.

State of Illinois, Springfield.

Orville F. Berry, Chairman; Bernard A. Eckhart, Jas. A. Willoughby.

William Kilpatrick, Sec'y.
Charles J. Smith, Ass't Sec'y.
F. G. Ewald, Consulting Engineer.
Thos. L. Wolf, Rate Clerk.

Telephones:

Chairman—Central Union 4307.
Secretary—Central Union 4365.
Office—Inter State 196; Central Union 4366, Inter State 307.

Chicago Office: Insurance Exchange Bldg., Rooms 712-714 W. Jackson Blvd.
Telephone Wabash 4278.
John P. Gibbons, Chief Grain Inspector.

East St. Louis Department: Office, 126 Merchant's Exchange, St. Louis, Mo.
Telephone Main 2200.

File No. —.
Subject —.

November 13th, 1913.

Hon. J. H. Drennan, Clerk of the Circuit Court, Springfield, Illinois.

DEAR SIR: Attached hereto find certified copy of the record of this Office in the case of Poehlmann Bros. Company against the Chicago, Milwaukee & St. Paul Railway Co. and others, Commissioners' Docket #2082, which case has been appealed by the Chicago, Milwaukee & St. Paul Ry. Co. from the Order of the Commission to the Circuit Court of Sangamon County, Illinois.

I enclose also receipt for these papers, which kindly sign and return for our files.

Respectfully yours,

WM. KILPATRICK, *Secretary.*

W. K. E.

Enc.

POEHLMANN BROS. COMPANY

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, CHICAGO and Eastern Illinois Railroad Company, Illinois Central Railroad Company, Chicago, Burlington and Quincy Railroad Company, Chicago, Indiana and Southern Railroad Company, Wabash Railroad Company, and F. A. Delano, E. B. Pryor and William K. Bixby, Receivers Thereof; Chicago and Alton Railroad Company, Chicago, Rock Island and Pacific Railroad Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Chicago, Terre Haute and South Eastern Railway Company, Chicago Junction Railway Company, Western Indiana Railroad Company, Belt Railroad Company of Chicago.

Petition for the Fixing of Through Rates on Intrastate Shipments of Coal and Manure to Morton Grove, Cook County, Illinois.

The Petition of the above named complainant respectfully shows:

1. That the complainant Poehlman Bros. Company is a corporation engaged in the business of growing and selling flowers in Chicago, Illinois, and in Morton Grove, Cook County, Illinois;
7 that the complainant owns and operates two greenhouses at Morton Grove, Illinois, which is a village about three miles outside of the corporate limits of the City of Chicago. That in the operation of its green houses, complainant consumes about 28,000 tons of bituminous coal per year, and a very large portion of this coal is shipped to complainant from points in the State of Illinois; that in the operation of the said green-houses, complainant uses about 700 cars of manure each year, and a large quantity of other materials. That the complainant has private and individual side tracks for the delivery of freight at its said greenhouses connected with the rails of the Chicago, Milwaukee and St. Paul Railway Company.

2. That the Defendant, Chicago, Milwaukee and St. Paul Railway Company, is a common carrier, engaged in the transportation of passengers and property for hire by railroad between points in the State of Illinois and Morton Grove, Illinois, and particularly in switching from Galewood, a station on its rails in Chicago, Cook County, Illinois, to the village of Morton Grove, freight carried to Chicago by other railroads from other points in this State of Illinois, that the other above name- defendant railroad companies transport or participate in the transportation of coal from various mines in the State of Illinois to points of junction in the City of Chicago with the said Chicago, Milwaukee and
8 St. Paul Railway Company, that in the transportation of coal destined to Morton Grove station, said last named defendant carries apply the proportionare rate applicable to business beyond Chicago, the amo-nt of which is the Chicago rate less 10 cents a ton; that all of said carriers are subject to the pro-

visions of the Act of the Legis*la*ture of the State of Illinois, entitled "An Act to Establish a Board of Railroad and Ware house Commissioners and prescribe their duties," as amended by the Act approved April 7th, 1911.

3. That the complainant above named is daily receiving at the village of Morton Grove, cars of bituminous coal and cars of manure and other materials moved to said village by the said Chicago, Milwaukee & St. Paul Railway Company from its station known as Galewood in Chicago, Illinois, where the defendant receives cars from other common carriers, that the distance from Galewood to Morton Grove is about 11 miles; that the said Chicago, Milwaukee & St. Paul Railway Company charges and collects for moving a car of bituminous coal from Galewood to Morton Grove, 40 cents per net ton; and that said carrier charges and collects the sum of 40 cents per ton for moving a car of manure from Glenwood to Morton Grove, that the said rates ars shown in the tariffs of the Chicago, Milwaukee & St. Paul Railway Company filed with this Commission Chicago, Milwaukee and St. Paul
9 Tariff G. F. D. 2500 B. and supplement 34, and Supplement 47, which latter Supplement becomes effective July 5, 1913 to said Tariff, Chicago, Milwaukee and St. Paul Tariff, G. F. D. 4510 F. and G. F. D., 2323 D and Supplements thereto. That there are no through rates from mines in Illinois to Morton Grove. That the complainant has during several years last past, paid said charges on a great number of cars shipped to Morton Grove from points in the State of Illinois, and in the purchase of all of its bituminous coal, manure, and other materials is required to pay said charges of the defendant carriers.

4. Complainant further shows that a charge of 40 cents per net ton on coal and of 40 cents on manure and other materials, for the service of said Chicago, Milwaukee and St. Paul Railway for moving said cars from Galewood to Morton Grove, i*n* unjust, unreasonable, excessive and discriminatory, and in violation of the provisions of the said Act to establish a Board of Railroad and Warehouse Commissioners and prescribe their duties, approved April 13, 1871, and the acts amendatory thereof and supplemental thereto.

5. Complainant further shows that many of the most important competitors of the complainant are located at Park Ridge and Des Plaines stations in Cook County, Illinois, a short distance from complainant, that there are six green houses at Park Ridge, and six at Des Plaines; that deliveries to Park Ridge and Des Plaines
10 require substantially the same service from Chicago as deliveries to Morton Grove, that all of said greenhouses at Park Ridge and Des Plaines enjoy deliveries of coal and other freight on the basis of the Chicago rate; that there is no switching charge on these commodities above the Chicago rate; that the products of the said greenhouses at Oak Ridge and Des Plaines are practically the same as the products of the complainants and are sold in the same market, and complainant is at a great disadvantage and burden because of the freight charges herein complained of and the same are unjustly discriminatory.

6. Complainant further shows, that located upon the Chicago, Milwaukee and St. Paul Railroad, east of Morton Grove, are three stations, known as Buena Park, Argyle Park and Edgewater; that deliveries by the Chicago, Milwaukee and St. Paul Railway Company at the said three last named stations require a longer switching service than deliveries at Morton Grove; that the charges of the said Chicago, Milwaukee and St. Paul Company from Galewood to Buena Park, Argyle Park and Edgewater have been fixed by the Interstate Commerce Commission at about 15 to 17 cents a ton, and that 10 cents per net ton thereof is absorbed by the carrier line; that all of the circumstances and conditions affecting the switching service to Morton Grove and to Buena Park, Argyle Park and Edgewater are substantially the same and the difference in charges therefor by the defendant carrier is an unjust and unlawful discrimination as against complainant.

11 7. Complainant further shows that deliveries of all commodities, including coal, are made to the Mark Manufacturing Company just outside of Evanston, Illinois, by the Chicago and Northwestern Railway Company on the basis of the Chicago rate, and that these deliveries involve a longer switching movement than deliveries to Morton Grove by this defendant.

8. Complainant further shows that deliveries are made by the Chicago, Milwaukee and St. Paul Railway Company, to a great many stations reached by its rails in Cook County, Illinois, on the basis of the Chicago rate, which stations require equal and in some cases more service by the Chicago, Milwaukee and St. Paul Railway Company than the movement of cars from Galewood to Morton Grove. Complainant shows that Addison Street station, Belmont Avenue station, Fullerton Avenue station, Mayfair, Grayland, and Franklin Park are among the stations on the said Chicago, Milwaukee and St. Paul Railway in Cook County, Illinois, which are given deliveries of coal and other commodities on the basis of the Chicago rate,

9. Complainant further shows that the North line of the Chicago Switching District is irregularly drawn and territory directly west of Morton Grove and for several miles farther north is inside the Chicago Switching District, and territory just east of Morton Grove and extending at least a mile north is also within the limits of the said Chicago Switching District.

12 10. Complainant further shows that the defendant carrier hauls coke from Chicago, Illinois to Milwaukee, Wisconsin, a distance of eighty-five miles, for a charge of 45 cents per net ton. That this rate is shown by Item Number 40 in C. M. & St. P. G. F. D. Number 2500 B. That coke is a commodity that requires more of the equipment of the carrier to transport an equal number of tons than does coal, and is a commodity that almost invariably takes a higher rate than bituminous coal.

11. Complainant further shows that complainant, as a consignee of freight at Morton Grove, Cook County, Illinois is directly and grievously discriminated against by the said defendant carriers; that the charge of 40 cents per net ton made against complainant as a

consignee bituminous coal and the charge of 40 cents per net ton made against complainant as consignee of manure and other materials is unjust, unreasonable, excessive, and discriminatory and complainant respectfully submits to this Honorable Commission that in view of the practically uniform custom at or near Chicago to make deliveries on the basis of the Chicago rate, that deliveries to the Complainant at Morton Grove Station should be made on that basis.

12. Complainant therefore says, that it has been subjected to the payment of rates for transportation which, when exacted were, and are now unjust and unreasonable, and in violation of the Act to establish a Board of Railroad and Warehouse Commissioners
13 and prescribe their duties, approved April 13, 1871, and the acts amendatory thereof and supplemental thereto.

13. Complainant further shows that it has at numerous times protested to the defendant against its above mentioned charge for hauling coal to Morton Grove, but the protests and requests of the complainant have been unavailing.

Wherefore, Petitioner, prays that the defendant may be required to answer the charges herein, that after a hearing and investigation, an order may be made, commanding the defendant to desist from said violation of the "Act to establish a board of Railroad and Warehouse Commission, and prescribe their duties", approved April 13, 1871, and the Acts amendatory thereof and supplimental thereto, and that this Honorable Commission may ascertain and determine the reasonable and lawful through rates and charges for transporting coal from all mining districts in Illinois to Morton Grove and the reasonable and lawful charge for moving cars of manure from Galewood Station to Morton Grove applicable to intrastate shipments, and order the said carriers to conform thereto, and complainant further prays for reparation herein, and for such other and further order as this Commission may deem just and reasonable in the premises.

(Signed) POEHLMANN BROS. CO.,
By M. F. GALLAGHER,
Its Attorney.

Address of Poehlmann Bros. Company, Complainant, Morton Grove, Illinois.

Address of Guerin, Gallagher & Barrett, Complainant's Attorneys, 1406 Tribune B'ld'g, Chicago, Illinois.

14 Before the Illinois Railroad and Warehouse Commission.

POEHLMANN BROS. COMPANY
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.

Answer.

The seperate answer of the respondent, Chicago, Milwaukee & St. Paul Railway Company, to the Petition of Complainant in the above entitled proceeding, respectfully shows.

I.

Answering paragraph one, this respondent admits the allegations therein contained.

II.

Answering paragraph two, this respondent admits the allegations thereof in so far as they refer to this respondent.

III.

Answering paragraph three, this respondent admits the allegations thereof.

IV.

Answering paragraph four, this respondent denies that a charge of 40 cents per net ton for transportation of coal, manure and other material, from Galewood to Morton Grove, excessive and discriminatory, and in violation of the Act to regulate Commerce as in said paragraph four alleged.

15

V.

Answering paragraph five, this respondent has not knowledge or information sufficient to verify the averments therein contained.

VI.

Answering paragraph six, this respondent denies that the circumstances and conditions affecting switching service to Morton Grove, Buena Park, Argyle Park and Edgewater are substantially the same, and denies that the difference in charges therefore made by the respondents, Chicago, Milwaukee & St. Paul Railway Company, is unjust and an unlawful discrimination against complainant.

VII.

Answering paragraph seven, this respondent has not knowledge or information sufficient to verify the allegations therein contained.

VIII.

Answering paragraph eight, this respondent denies that it makes deliveries to a great many stations reached by its rails in Cook County, Illinois, on the basis of the Chicago rate, which stations require equal and in some instances more service by the Chicago, Milwaukee & St. Paul Railway Company, then the movement of cars from Galewood to Morton Grove, as in said paragraph alleged.

XI.

Answering paragraph nine, this respondent denies that Morton Grove is within the Chicago Switching District of this respondent,

and denies that points more remote from the City of Chicago than Morton Grove are within its Switching District.

16-18 X.

Answering paragraph ten, this respondent refers to its regularly published Tariffs on file with the Commission for a correct statement of its Tariff on Coke between Milwaukee and Chicago, should that tariff on that commodity be considered material to the issue herein.

Answering paragraph eleven and twelve, this respondent denies that a charge of 40¢ per net ton made against complainant as consignee of bituminous coal and of manure and other materials in unjust, unreasonable, excessive, and discriminatory, and in violation of the Act to establish a board of Railroad and Warehouse Commissioners, and describe their duties, approved April 13, 1871, and the Acts amendatory thereof and supplemental thereto.

XI.

Further answering this respondent denies each and every allegation in said complaint contained, not hereinbefore admitted, denied, or otherwise answered unto.

Wherefore having fully answered petition of Complainant in the above entitled proceeding, this respondent prays that it be dismissed hence.

Dated at Chicago, Illinois, August 6th, 1913.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

(Signed) By O. W. DYNES,
Its Commerce Counsel.

* * * * * * *

19 Before the Honorable Railroad and Warehouse Commission of the State of Illinois.

POEHLMANN BROTHERS COMPANY
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY et al.

Separate Answer of Illinois Central Railroad Co.

And now come The Illinois Central Railroad Company, by John G. Drennan, its Attorney, and for answer to the petition in the above entitled cause says,

1. This respondent has no knowledge of the allegations contained in section one of complainant's petition.

2. This respondent admits that it is a common carrier engaged in interstate and intrastate Commerce, and as such subject to the laws of the United States and the State of Illinois. This respondent also admits that on shipment of coal from mines located on its road to Morton Grove, Illinois, it applied the proportional rate to Chicago,

which is ten cents per ton less than the rate for delivery in Chicago proper.

3. Answering section three of said petition, this respondent denies that it has not through rates on coal from mines located on its road to Morton Grove, Illinois, but on the contrary avers that it publishes a tariff *or* through rates and charges on said commodity between said points.

Further answering, this respondent says that it has no knowledge of the other allegations contained in section 3 of said petition.

5. This respondent has no knowledge of the allegations contained in section 4 of complainant's petition and respectfully submits that said allegations should be answered by the respondent, Chicago, Milwaukee & St. Paul Railway Company.

5. Answering section five of said petition, this respondent says that it has no knowledge of the number or importance of complainant's competitors alleged to be located at Park Ridge and Des Plaines, Illinois.

Further answering this respondent says that both Park Ridge and Des Plaines are within the Chicago switching District, and that Chicago rates apply on coal from Illinois mines to said points, but it denies that said complainant has been discriminated against because of the difference in the rates and charges to Morton Grove, Illinois, as compared with Park Ridge and Des Plaines, and this respondent further says that the rates charged to Park Ridge and Des Plaines compared with Morton Grove furnish no just ground of comparison.

This respondent further says that if the Chicago rates should be made to apply on coal to Morton Grove, it will involve the filing of numberless complaints against this and other roads by shippers located at points even beyond said village and other points, and there will be no way of computing what territory should be considered as within the switching district of Chicago.

6. This respondent has no knowledge of the allegations contained in section 6, of said petition, and neither admits or denies the same, but respectfully asks that the complainant be required to make strict proof thereof.

7. This respondent has no knowledge of the allegations contained in section seven of said petition.

8. This respondent has no knowledge of the allegations contained in section eight of complainant's petition and respectfully submits that the allegations contained in said section should be answered by the respondent, Chicago, Milwaukee & St. Paul Railway Company.

9. This respondent denies the allegations contained in section nine of said petition.

10. This respondent has no knowledge of the allegations contained in section ten of said petition and respectfully submits that the same should be answered by the respondent, Chicago, Milwaukee & St. Paul Railway Company.

11. This respondent denies that it has been guilty of discrimination against the complainant in its rates and charges on coal to

Morton Grove, or any other point in the State of Illinois, but on the contrary avers that its rates and charges are uniform, just and reasonable.

22-28 12. This respondent denies that it has subjected the complainant to the payment of rates and charges for transportation which are unjust, unreasonable or discriminatory or in violation of the Railroad and Warehouse Commission Act of the State of Illinois, or any other law, but, on the contrary avers the said rates and charges are unduly low as compared with the service performed for said complainant, and that the rates of said commodity should be raised rather than reduced.

13. This respondent denies that said complainant has at numerous times protested against the rates and charges on coal to Morton Grove, Illinois, and even if said protests were made, this respondent says that said complaint has no just ground of complaint on account of said rates and charges.

14. This respondent, further answering, says that this Honorable body has no jurisdiction of the subject matter of the complaint herein.

For the reasons above set forth, and as will more fully appear at the hearing of said cause, this respondent respectfully submits that said complaint should be dismissed.

ILLINOIS CENTRAL RAILROAD COMPANY,

(Signed) By J. G. DRENNAN, *Its Attorney.*

* * * * * * *

29 Before the Illinois Railroad and Warehouse Commission.

Docket No. 2082.

POEHLMANN BROS. COMPANY
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al.

Answer of the Belt Railway Company of Chicago, One of the Defendants in the Above-entitled Cause.

And now comes The Belt Railway Company of Chicago, by C. G. Austin, its attorney, and exhibits this its separate answer to the complaint in this proceeding, and respectfully represents:

That it is a railroad corporation, organized and existing under and by virtue of the laws of the State of Illinois:

That the business in which it is engaged is that of switching of freight cars, loaded and empty, to and from industries located on its line, and to and from connections of different railroad companies:

30 That it does not participate in any through rates; that it makes an arbitrary charge of a fixed and certain amount per car, regardless of the commodity with which such car may be loaded. That this charge is not based upon any classification of freight

contained within any car, or the classs thereof, or the kind thereof, except from the billing furnished with cars by Railroad companies from whom it may receive loaded cars, that its business is wholly within the State of Illinois and wholly within Cook County in said State.

That complainant's greenhouses and business enterprise is not located upon the railroad of this defendant, that this defendant has no connection with any of the buildings or greenhouses named in the Bill of complaint filed herein.

That it is not interested in, to or about the matters and things in controversy in this proceedings and it prays to — dismissed hence.

All of which is respectfully submitted.

THE BELT RAILWAY COMPANY OF CHICAGO,

(Signed) By C. G. AUSTIN, *Its Attorney.*

31 Before the Railroad and Warehouse Commission of the State of Illinois.

2082.

RAILROAD AND WAREHOUSE COMMISSION ex Rel. POEHLMAN BROS. COMPANY, Complainant,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Defendants.

Complaint of Rates on Coal and Manure Shipped to Morton Grove, Illinois.

The record shows that the Complainant herein owns and operates greenhouses at Morton Grove, Illinois, which village is about three miles outside of the corporate limits of the City of Chicago, that in the operation of such greenhouses the complainant consumes in the neighborhood of thirty thousand tons of bituminous coal annually and that a large portion of this coal is shipped to complainant from points in the State of Illinois, that further in the operation of said greenhouses said complainant used in the neighborhood of seven hundred cars of manure each year, and a large quantity of other materials, that the complainant has private and individual side tracks for the delivery of freight at its said greenhouses connected with the rail of the Chicago, Milwaukee & St. Paul Railway Company.

32 The record further shows that the complainant is daily receiving at the village of Morton Grove cars of Bituminous coal and manure as well as other materials, moves to said village by the Chicago, Milwaukee & St. Paul Railway Company from its station, known as Galewood, in Chicago, Illinois, where the defendant Chicago, Milwaukee & St. Paul Railway Company receives cars from other common carriers.

The record further shows that from Galewood to Morton Grove is

a distance of about eleven miles, and that the defendant Chicago, Milwaukee & St. Paul Railway Company charges and collects for moving a car of bituminious coal from Galewood to Morton Grove, *forth* cents per net ton, and that said defendant road also charges and collects the sum of forty cents per net ton for moving a car of manure from Galewood to Morton Grove, that said rates are shown in the tariffs of the Chicago, Milwaukee & St. Paul Railway Company filed with this Commission, namely Chicago, Milwaukee & St. Paul tariff G. F. D. 2500 B, and supplement 34 and Supplement 47, which later supplement became effective July 5 1913, to said tariff and Chicago, Milwaukee & St. Paul tariff G. F. D. 4510, F. and G. F. D. 2323 D, and Supplements thereto.

The complaint shows that the facts are, that there is no through rate from the coal district to Morton Grove. The record further shows that other common carriers are delivering coal and other material to similar plants upon their particular lines of road for what is known as the Chicago rate, and it is charged that it is discrimination upon the part of the defendant Chicago, Milwaukee & St.

33 Paul Railway Company in not so delivering coal to the complainant to Morton Grove. It is charged in the Complaint that the record shows that this defendant road is making deliveries at several stations upon its road on the basis of the Chicago rate, which stations require equal and in some cases more service by the said defendant road, that the movement of cars from Galewood to Morton Grove.

It appears in the record herein that the charges applicable on coal from mines in Illinois to Morton Grove are made up of two factors. First.—The proportional rate to Chicago of the carrier obtained the line haul. Second.—The charge of the Chicago, Milwaukee & St. Paul Railway Company for hauking the cars from Galewood to Morton Grove of Forty cents per net ton, it appearing that the carrier obtaining the line haul usually absorts the switching charge of the Belt Railway out of its proportional charge to Chicago.

While the complaint herein asked for the establishment of through rates Via the several defendants roads herein from points in Illinois to Morton Grove, the record also shows that the only rate attached by the complainant is the charge of forty cents per net ton made by the Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove and all of the evidence before the Commission in this case is directed against the unreasonableness of this rate.

The reasonableness of the charge of the other defendant

34 roads for the line haul was not attached in any manner in this proceedings, and no evidence offered upon that subject hence we assume that the line haul charge is considered reasonable, and without going into *to* detail upon that branch of the case, it is sufficient to say that the Commission does not feel it necessary at this time to enter into the question of discrimination as charged in the complaint, nor does it feel that it is necessary or that it will be justified in entering into the question of through rates between the other defendant roads, and the defendant Chicago, Milwaukee & St. Paul Railway Company, from the coal producing district of Illinois

to Morton Grove, believing that the matter can be properly disposed of without entering into that question.

This leaves for consideration then the one question of the reasonableness or the unreasonableness of the charge of Forty cents per net ton by the defendant Chicago, Milwaukee & St. Paul Railway Company between Galewood and Morton Grove on coal and manure.

After a careful investigation of the rates charged by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to other stations on its lines of road in the vicinity of Morton Grove, and also an investigation of the rates charged by other defendant roads in that locality, for similar distance, when compared
35 with the charge made by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove, the Commission believes that said charge of forty cents per net ton to be an unreasonable charge.

It is contended with considerable earnestness that no order should be made in this proceeding for the reason that through rates on coal and also switching rates should be taken up in their entirety, and disposed of, and not upon individual complaint. While the Commission appreciates the need of a general revision of through rates, as well as switching charges, yet it does not feel that it should debar any individual from filing his or its complaint with the Commission and having heard and action taken thereon, and the Commission being fully advised upon consideration, finds that the charge of forty cents per net ton on coal and manure, made by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewoood to Morton Grove i*n* an unreasonable charge.

It is therefore ordered, adjudged and decreed by the Commission that the said rate of forty cents per net ton on coal to Galewood to Morton Grove be, and the same is hereby reduced and fixed at a charge of not to exceed twenty cents per net ton on coal, and not exceed twenty five cents per net ton on manure from Galewood to Morton Grove, and the Defendant the Chicago, Milwaukee & St. Paul Railway Company is hereby directed to cease and desist from asking any greater charge than herein above specified on movements
36–40 of coal and manure from Galewood to Morton Grove, the Commission finding that the charge herein made and specified, is a reasonable charge there*of*.

By order of the Commission this 25th day of October 1913, dated at Springfield, Illinois.

(Signed) O. F. BERRY, *Chairman.*
(Signed) B. A. ECKHART, *Commissioner.*
(Signed) J. A. WILLOUGHBY, *Commissioner.*

* * * * * * *

41–45 And afterwards to-wit on the 2nd day of May A. D. 1914, there was filed in the office of the clerk of the Sangamon County Circuit Court a certain Stipulation, a copy of the said stipulation being in the words and figures as follows to-wit:

STATE OF ILLINOIS,
Sangamon County, ss:

In the Circuit Court of Sangamon County.

ILLINOIS RAILROAD AND WAREHOUSE COMMISSION ex Rel. POEHLMANN BROS. COMPANY
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Stipulation.

It is hereby stipulated by both parties that the above entitled cause may be, and is hereby submitted to His Honor, Judge Creighton, for consideration and decision upon the evidence introduced by both parties during the hearing of said cause before the Illinois railroad and Warehouse Commission.

It is further stipulated, that an order may be entered by the Court allowing time for the filing of Brief and that the Chicago, Milwaukee & St. Paul Ry., shall submit within Ten (10) days from this date, and Poehlmann Bros. Company within five (5) days from this date thereafter and the Chicago, Milwaukee and St. Paul Railway shall then have three (3) days for the filing of a Reply Brief, and thereafter, on some date convenient to the Court, the case shall be set down for oral argument.

Dated, April 29, A. D. 1914.

M. F. GALLAGHER,
Attorneys for Poehlmann Bros. Company.

* * * * * * *

O. W. DYNES,
Attorneys for Chicago Milwaukee and St. Paul Railway Company.

46–47 And afterwards to-wit: on the 25th day of September A. D. 1914, there was filed in the office of the Clerk of the Sangamon County Circuit Court the Testimony, taken and heard before the Railroad and Warehouse Commission and which said testimony is incorporated herein by the stipulation of the parties hereto, and said testimony being as follows to-wit:

* * * * * * *

48 Chairman you may proceede and number 2082.

Mr. Gallagher: The Complaint is Phoelmann Brothers Company. They operate a greenhouse plant—a very large greenhouse plant at Morton Grove a village inside of Cook County about three miles north of the City Limits, and they complaint of their coal rate, Morton Grove is on the Chicago, Milwaukee and St. Paul Railway and is a station about nine miles from Galewood a transfer point, where coal is delivered by the coal carrying roads through the St. Paul. The rate of the Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove is forty cents per ton

ten cents of that absorbed by coal carrying road so that Morton Grove is paying to-day thirty cents a ton the Chicago rate plus thirty cents a ton. Now he complains particularly because his competitors in the greenhouse business in Cook County are getting their coal on the Chicago rate.

Most of the competitors of Phoelmann Bros. Greenhouse business located at such places as Des Plains Station and other places up to the north of Cook County heere are receiving their coal under the Chicago rate which puts him at a disadvantage of about thirty cents a ton on his coal in conducting his business.

49 First I want to give your Honor an impression of the case and then suggest to Mr. Dynes if agreeable to him, we submit the case on the transcript of evidence taken in a similar case before the Interstate Commerce Commision. At the time the case was filed before the Interstate Commerce Commission the complainant was buying its coal in West Virginia. He is now buying practically all of his coal in Illinois and he consumes thirty thousand tons of Illinois coal a year so all of the case is one for this Commission and the question before the Interstate Commerce Commission which would come largely in between It is now under advisement, however. But the evidence was all taken in the case before the Interstate Commerce Commission and, if it is agreeable to Mr. Dynes, I am willing to submit the case on this transcript after asking Mr. Poehlmann a few questons.

* * * * * * *

50 I want to ask Mr. Poehlmann a few questions and I am willing to stipulate that the case be submitted on this evidence.

* * * * * * *

51 Mr. W. W. Collin, Jr.: I appear for the C. I. & S. and the Big Four and it is perfectly agreeable.

Mr. Clardy: So far as the C. E. I. R. R. is concerned I understand this doesn't involve our proportional rate to Chicago.

Mr. Gallagher: We are asking for a through rate.

Mr. Clardy: That is our understanding. Of course if this record attacks the reasonableness of that rate we could not stipulate as to that.

Mr. Gallagher: This evidence will not.

Mr. Clardy: It merely questions the charge from Galewood to Morton Grove and Park Ridge.

Mr. Dynes: Our position has been that it is the question of the through rate. I merely state that.

Mr. Clardy: I don't know whether or not it attacks the through rate. If it does, of course, we could not stipulate.

Mr. Gallagher: This record doesn't go into the reasonableness of your rate at all.

Mr. Clardy: Then, we have no objection.

Mr. Cameron: I would like to say a word on behalf of the Illinois Central R. R. Company in connection with this case.

52–57 We are made party defendant here. I want to say first, in my opinion, and I think in the opinion of the traffic of-

ficials of the other coal carrying roads in Illinois, there is no more important question that they have confronting them at this time than the one involving rates on coal from State and Interstate points to points in the Chicago switching district and adjacent to that district. Now Mr. Dynes says he takes the position it is a question of the through rate and, of course we know so far as the consignee is concerned that is true but no agreements or arrangements that Illinois and interstate roads entered into with the switching roads at Chicago which may be said has only been carried out in part so far as some of the roads are concerned. We apply the Chicago rate over an immense territory. The Chicago rate on Illinois and Indiana coal is a low rate. It is the lowest rate for any corresponding service that we have been able to find.

Mr. Gallagher: I will find you a great many.

Mr. Cameron: For corresponding service?

Mr. Gallagher: Yes. Up to Southern Ohio lake ports you will find them.

* * * * * * *

58 Mr. Clardy: We understand our proportional rate is not involved. If it is we cannot agree.

Mr. Gallagher: The complaint asks for the establishment of through rates from the mines to Morton Grove.

Mr. Dynes: He is asking about the record we are stipulating in.

Mr. Gallagher: What is the name of your Company and your official connection with it?

Mr. Poehlmann: Phoelmann Brothers Company. I am Secretary and Treasurer of the Company.

Q. About how many tons of coal a year do you consume in your business?

59 A. Approximately thirty thousand tons. The probabilities are the tonnage will be increased on account of using Illinois coal. These thirty thousand tons are based on about two-thirds eastern coal and one-third Illinois coal.

Q. That proportion of your coal comes from mines in the State of Illinois?

A. At the present time almost all of it.

Q. Ninety percent would you say or over?

A. I would say perhaps ninety-five percent.

Q. How many cars of manure do you use in a year in your business?

A. Probably five hundred, as near as I can judge.

Q. Now have you a freight bill showing freight rates on manure?

A. I have, I believe.

Q. What is your rate?

A. On manure we pay two and a half cents a hundred pounds from the stock yards to Morton Grove. And two cents from points along the St. Paul road. I don't know just what street these cars are loaded on.

Q. What part of Chicago are they loaded?

A. Somewhere along the Panhandle. Where the St. Paul runs parallel with the Panhandle.

Q. They are loaded on to cars on the rails of the C. M. & St. P. Ry, in Chicago?

60 A. Yes, sir.

Q. And transported to Morton Grove and you pay the St. Paul Company forty cents a ton?

A. Yes, sir.

Q. About what is the tonnage in a car of manure?

A. It will vary from probably fifty thousand pounds to one hundred thousand pounds.

Q. It runs about the same as coal does it?

A. Yes, sir.

Q. Now on coal you pay the Chicago rates plus thirty cents a tone, is that right?

A. On Illinois and Indiana coal.

Q. Illinois and Indiana coal?

A. Yes.

Q. Now where are your competitors in the green house business located?

A. Along the Northwestern, Park Ridge and Des Plaines. That is where our principal competitors are. Also along the Northwestern at Rosehill and Summerdale.

Q. Have you any competitors on the rails of the Chicago, Milwaukee and St. Paul Railway?

A. I believe there is one at or near Greenwood Station.

Q. Greenwood station is on the Northwestern Railway?

A. I guess that is right.

Q. How about over around Edgewater?

A. They are only small green houses men there. I don't know where they get or buy it.

Q. You stated about thirty percent of your operation is fuel, is that right?

61 A. Approximately, yes.

Q. If the Commission please so far as the rates are concerned to all these other points I think that is all covered in detail in this transcript.

Cross-examination by Mr. Dynes:

Q. Who is the President of your Company?

A. John Poehlmann.

Q. Is it a corporation?

A. Yes, sir.

Q. How long have you been in business there?

A. As a partnership between the three brothers we were in business ten years before we incorporated. It is still the same partners only incorporated.

Q. You mean you continued as partners for a period of ten years?

A. Yes and then we incorporated.

Q. How long ago did you incorporate?

A. In 1901.

Q. Then you have been about twenty-two years in the business?

A. No, twenty-three years. There was a split in the partnership for a year. We incorporated a year after that split.
Q. Have you extended the business any?
A. We have some, yes.
Q. Are you consuming any more coal than you did ten years ago?
62 A. Considerably more.
Q. Fifty percent more?
A. Yes but this condition has been growing in the last ten years.
Q. Do you use any more manure for fertilizer, than you did ten years ago?
A. Yes, sir.
Q. Have you added any acreage to your plant in the last ten years?
A. Yes we have bought from time to time.
Q. How much did you have approximately twelve years ago when you incorporated?
A. I could not just exactly tell you how much larger we are now than we were ten years ago.
Q. Do you know how many acres you have bought in the last twelve years?
A. Well we had to buy land which was necessary for the business.
Q. Can you give us any idea of how many acres you bought?
A. We probably have on- hundred and seventeen all together.
Q. How many of those were bought in the last twelve years?
A. About seventy-five acres, I judge in the last ten years.
63 Q. More than half?
A. Yes.
Q. What are you capitalized for?
A. Ninety thousand dollars.
Q. Ninety thousand dollars?
A. Yes.
Q. Do you know approximately what your plant is worth at the present time?
A. Yes, I think I do.
Q. Have you any objection to stating that?

Mr. Gallagher: I will admit the business out there has been developing, if that is the point counsel wishes to bring out. They have been prosperous but, as the witness has stated the grass acreage has practically developed in the last five years. Competition is much more of a factor in the growing and selling of flowers.

Mr. Dynes: It has more than doubled.

Witness: The increas- in our business was made principally within right immediately following the incorporation. We had some good years until about 1906 the business was very good and we went right ahead of course to extend our business. Since 1907 the competition has been very much keener because of the *feat* so many have sprung up around Des Plaines, Park Ridge and other points where they had an advantage over us. At the present time the green

houses of our capacity situated at Des Plaines has an advantage of over twelve thousand dollars over us. That would mean in five years it would have the best of us of sixty thousand dollars plus the money they are using and that is what is putting us at a dis-
64 advantage at the present time.

Mr. Dynes: All I was asking this question for was whether they had prospered under the rates or not. Mr. Gallagher spoke of the dip in the Northwestern Railway Company's north switching limits boundary.

Mr. Gallagher: That is the official Lowrey Tariff that you have in your hands. The official map of the Chicago switching territory.

Mr. Dynes: The blue line with the dip to the south or prongs to the north representing the Northern boundary of what you call the official switching map is co-incident with the northern switching boundary of the Chicago Northwestern and no other railway company, isn't that true?

Mr. Poehlmann: I don't know.

Q. Well you do know that there is no dip in the northern switching boundary of the C. M. & St. P. Railway Company corresponding with this dip that Mr. Gallagher has mentioned.

Mr. Poehlmann: Not that I know of.

Q. Now you have stated today and at the other trial on the hearing on the interstate feature of this cause, that you encountered no competition on the rails of the C. M. & St. P. Railway but did encounter it on the rails of the various other railway companies near Chicago. Do you claim that the C. M. & St. P. Railway Co. should meet the rates of the Northwestern Railway Company in order to put you on a proper footing that you as a shipper on our line should be on a proper footing with competitors that are shippers on their line?

65 A. I would think so, yes.

Q. That is all.

Mr. Gallagher: I would like to offer these two expense bills in evidence to show the charge for moving cars of manure in Cook County by the St. Paul Company.

Commissioner Eckhart: What do they charge?

Mr. Gallagher: From the stock yards forty-five cents a ton and from points loaded on their rails forty cents a ton.

Mr. Dynes: From what points on our rails was it loaded?

Mr. Gallagher: Can you state more definitely, car #188607?

Mr. Poehlmann: I don't know where that manure is loaded. They used to load those cars on Green Street.

Mr. Gallagher: It says freight from Division Street.

Mr. Poehlmann: I don't know where that point is.

Mr. Gallagher: The other is freight from the U. S. Yards. I ask to have these marked Complainant's Exhibits "A" and "B".

Whereupon the aforesaid documents so offered and received in evidence were marked complainant's Exhibits "A" and "B" respectively and are in the words and figures following to-wit:

Mr. Gallagher: Now I believe all other material matters are set

forth in the transcript and if I have leave to file a brief I
66-68 am willing to submit the case, on the transcript.

* * * * * * *

69–89 Mr. Gallagher: I think we better have the stipulation clearly—defined or we will never know what is in this record. As I understand, we all stipulate that the stranscript in the evidence of Phoelmann Brothers vs. C. M. & St. P. Ry. Co., docket 4762, before the Interstate Commerce Commission will be considered as read into the evidence in this case and considered by this commission.

Chairman: I so understand it.

* * * * * * *

90 And afterwards to-wit, on the 5th day of November A. D. 1914, the same being one of the term days of the November Term A. D. 1914, of the Sangamon County Circuit Court, the following proceedings *was* had and entered of record as follows to-wit:—

STATE OF ILLINOIS,
Sangamon County, ss:

In the Circuit Court, November Term, A. D. 1914.

ILLINOIS RAILROAD AND WAREHOUSE COMMISSION ex Rel.
POEHLMANN BROS. COMPANY, Complainants,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Defendants.

Appeal from Railroad & Warehouse Commission.

Order.

The appeal in the above entitled cause having come on for hearing *on* the record of the Chicago, Milwaukee & St. Paul Railway Company, as certified to by it, and the Court having heard the arguments of counsel, and having considered the facts and circumstances appearing in the evidence as shown by said record, and being fully advised in the premises, doth find that the said Commission had jurisdiction of the subject matter and of the parties
91 thereto, and that it does not clearly appear that the finding of the said Commission was against the manifest weight of the evidence presented to and *r*efore the said Commission for and against said order and decision, and that the sai*s* order and decision made and entered herein by the Railroad and Warehouse Commission of Illinois on the 25th day of October A. D. 1913, is neither unlawful nor -reasonable, and that the said order and decision should be affirmed.

It is therefore, ordered, adjudged and d*d*ecreed by the court,

That the said order and decision made and entered herein by the Railroad and Warehouse Commission of Illinois on the 25th day of October A. D. 1913, be, and it is affirmed.

Dated this 5th day of November, 1914.

Entered.

JAMES A. CREIGHTON, *Judge.* [SEAL.]

And the defendant, Chicago, Milwaukee & St. Paul Railway Company by itz solicitors excepts to the foregoing order.

92 And afterwards to-wit, on the 6th day of November A. D. 1914, the same being one of the term days of the November term A. D. 1914, of the Sangamon County Circuit Court, the following proceedings *was* had and entered of record as follows: to-wit:—

RAILROAD AND WAREHOUSE COMMISSION OF ILLINOIS ex Rel. POEHLMANN BROS. COMPANY, Complainants,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY et al., Defendants.

Appeal from Railroad and Warehouse Commission.

This day come again the parties hereto by their respective solicitors and the termination of the Existence of the Railroad & Warehouse Commission is suggested and that it is succ-eded by the State Public Utilities Commission of Illinois.

And the defendant Chicago, Milwaukee and St. Paul Railway Company by its solicitors prays an appeal of this cause to the Supreme Court of the State of Illinois, which is allowed by the Court upon the said Defendant filing its bond in the sum of Five Hundred Dollars ($500) to be approved by the Clerk of this Court in Forty (40) days. Certificate of evidence and bill of exceptions in Sixty (60) days. It is ordered by the Court that the order of the Railroad and Warehouse Commission appealed from, be and the same is stayed pending this appeal.

* * * * * * *

93 And afterwards to-wit, on the 24th day of November A. D. 1914, there was filed and approved in the Office of the Clerk of the Sangamon County Circuit Court a certain Appeal Bond to the Supreme Court.

* * * * * * *

94 & 95 And afterwards to-wit on the 9th day of December A. D. 1914, there was filed in the office of the Clerk of the Sangamon County Circuit Court, a certain Præcipe for Record to the Supreme Court; a copy of the said Præcipe being in the words and figures as follows to-wit:

* * * * * * *

96 STATE OF ILLINOIS,
Sangamon County, ss:

In the Circuit Court of Sangamon County.

RAILROAD AND WAREHOUSE COMMISSION OF ILLINOIS ex Rel. POEHLMANN BROS. COMPANY, Appellee,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant.

Stipulation.

It is hereby stipulated and agreed by and between the respective parties to the above entitled cause that the Transcript of Evidence and all other documents that were certifiel by the Railroad and Warehouse Commission of Illinois to the Circuit Court of Sangamon County for the consideration of said Court in passing upon questions presented by the appeal herein may be certi-ied by the Clerk of said Circuit Court to the Supreme Court of the State of Illinois in lieu of certified copies thereof.

Dated at Chicago, Illinois, this 1st day of December A. D. 1914.

M. F. GALLAGHER,
Attorney for Appellee,
O. W. DYNES AND
S. D. SCHOBER,
Attorney- for Appellant.

97 STATE OF ILLINOIS,
Sangamon County, ss:

I, J. H. Drennan, Clerk of the Circuit Court within and for the County of Sangamon, in the State of Illinois, and keeper of the records and seal of said Court, do hereby certify that the foregoing is a true, perfect and complete copy of the convening order of said Court for the November Term A. S. 1914, also a true, perfect and complete transcript of the record now remaining in my office, also copy of appeal bond, and I further certify that this Transcript includes the Transcript of record from the Railroad and Warehouse Commission as certified to by its Secretary to this Court, and also the Testimony taken and heard before the Railroad & Warehouse Commission and which said Transcript and Testimony from the Railroad & Warehouse Commission are incorporated herein by the stipulation of the parties hereto, in a certain cause lately pending in said Court on the Chancery side thereof, wherein Railroad and Warehouse Commission of Illinois ex rel. Poehlmann Bros. Company, Complainants vs. Chicago, Milwaukee & St. Paul Railway Company et al. Defendants, as the same appears from the records and filed of said Court in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Springfield this 9th day of December 1914.

[SEAL.] J. H. DRENNAN, *Clerk.*

98 *Assignment of Errors.*

Now comes the Chicago, Milwaukee & St. Paul Railway Company and assigns the following errors of record.

First. The order of the Railroad and Warehouse Commission appealed from places a burden upon interstate commerce and is in violation of the Commerce Clause of the Federal Constitution and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Second. The *p*rder of the Railroad and Warehouse Commission appealed from works a discrimination against interstate coal and produce-s and shippers thereof in f*q*vor of Illinois coal and producers and shippers thereof in respect of freight charges for identically the same service and is in violation of the Commerce Clause of the Federal Constitution, and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Third. The order entered by the Railroad and Warehouse Commission is outside the scope of the complaint and answer on which the hearing was had and deals with a subject not in issue and was and is, therefore, unreasonable and unlawful and the Circuit Court of Sangamon County *s*rred in sustaining and affirming said order on appeal.

99 Fourth. The Railroad and Warehouse Commission was without jurisdiction of the subject matter prior to and at the time of entering the order appealed from and said order is unreasonable and unlawful and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Fifth. The Railroad and Warehouse Commission did not notify the Chicago, Milwaukee & St. Paul Railway Company that it would hold a hearing on the subject covered by its order and the Chicago, Milwaukee & St. Paul Railway Company was not given a hearing on said subject as required by the Statutes of Illinois before the entry of said order and said order is, therefore, unreasonable and unlawful and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Sixth. The order of the Railroad and Warehouse Commission directs the charging of a lower rate on the commodities involved than is fixed by the so-called Illinois Tariff for the same commodities hauled equal distances in other parts of the State of Illinois and if given effect would result in discrimination in favor of the complainan*y* in this case and against producers and dealers in coal shipp*onh* elsewhere within the State of Illinois and against consumers of coal other than complainant shipping elsewhere within the State of Illinois and said order, therefore, — unreasonable

100 and *and* unlawful and the Circuit Court of Sangamon County erred in sustaining and affirming said order on appeal.

Seventh. The order of the Railroad and Warehouse Commission appealed from if given effect would give to one carrier an unfair or unequal advantage over another, contrary to the provisions of Section 27 of an act entitled an Act to Establish a Board of Railroad and Warehouse Commissioners and Prescribe their Powers and

Duties, approved April 13, 1871, as subsequently amended and the Circuit Court of Sangamon Court erred in sustaining and affirming said order.

Eighth. The order of the Railroad and Warehouse Commission appealed from is unlawful and unreasonable and the Circuit Court of Sangamon County erred in sustaining and affirming said order.

S. D. SCHOLES &
O. W. DYNES,
Attorney- for Appellant.

101 & 102 STATE OF ILLINOIS,
Sangamon County, ss:

I, J. H. Drennan, Clerk of the Circuit Court within and for the County of Sangamon, in the State of Illinois, and keeper of the Records and Seal of said Court, do hereby certify that the attached Transcript of Testimony is the Transcript of Testimony filed in this cause, on to-wit, the 25th day of September, A. D. 1914, and which Testimony is referred to in the Record on page 48 thereof, certified by me on the 9th day of December, A. D. 1914.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at Springfield, this 12th day of January, A. D. 1915.

[SEAL.] J. H. DRENNAN, *Clerk.*

* * * * * * *

103 Before the Interstate Commerce Commission.

Docket No. 4762.

POEHLMAN BROS. COMPANY, Complainant,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Defendant.

CHICAGO, ILL., June 14, 1912—3:30 P. M.

Before A. B. Pugh, Special Examiner.

Met pursuant to notice.

Appearances:

M. F. Gallagher (1406 Tribune Bldg., Chicago, Ill.) Appearing for the complainant.

O. W. Dynes, (1335 Railway Exchange Bldg.) Chicago, Ill., appearing for the Chicago, Milwaukee & St. Paul Railway Company.

* * * * * * *

104 *Proceedings.*

Examiner Pugh: The case of Poehlman Bros. Company vs. Chicago, Milwaukee & St. Paul Railway Company, Docket No. 4762, has been set for hearing by the Interstate Commerce Commission at this time and place. Who appears for the complainant?

Mr. Gallagher: M. F. Gallagher.

Examiner Pugh: Who appears for the defendant?

Mr. Dynes: O. W. Dynes and W. E. Prendergast, of the Traffic Department.

Examiner Pugh: This petition involves the question of switching charges at forty cents per ton on coal in carloads from Galewood station, Chicago, to Morton Grove, The complainant alleges that the rate involves unjust discrimination against it, and charges a violation of sections two and three; also that the rate of forty cents per ton is in violation of section one and is unjust and unreasonable; that is about what is in the case.

Mr. Gallagher: The two points involved, Galewood and Morton Grove are two stations in Cook county. The distance is about 12 miles.

Examiner Pugh: You may proceed with the evidence in your case.

Mr. Gallagher: Mr. Poehlman will take the stand, please.

A. F. POEHLMAN was called as a witness, and having been duly sworn testified as follows:

Direct examination:

Mr. Gallagher: Your name is August Poehlman?

Mr. Poehlman: Yes, sir.

Mr. Gallagher: You are Secretary-Treasurer of the Poehlman Bros. Company?

105 Mr. Poehlman: Yes, sir.

Mr. Gallagher: What is the business of that company?

Mr. Poehlman: We are in the wholesale florist business.

Examiner Pugh: It is a corporation?

Mr. Poehlman: It is a corporation, yes sir.

Examiner Pugh: Where does it do business?

Mr. Poehlman: Morton Grove and Chicago.

Mr. Gallagher: Where are your greenhouses located?

Mr. Poehlman: Morton Grove.

Mr. Gallagher: Where is your sales office?

Mr. Poehlman: Our sales office is at Chicago, 72 Randolph street now, at the present time.

Mr. Gallagher: What is the amount of your investment at Morton Grove in these greenhouses?

Mr. Poehlman: Approximately $750,000 to $800,000.

Mr. Gallagher: How many tons of coal do you consume annually?

Mr. Poehlman: Approximately 30,000 tons.

Mr. Gallagher: Where does this coal come from?
Mr. Poehlman: About two-thirds of it originates in West Virginia and other eastern points.
Mr. Gallagher: How long have you been located at Morton Grove?
Mr. Poehlman: Twenty-two years.
Mr. Gallagher: You produce all kinds of flowers, is that your business?
Mr. Poehlman: We specialize on certain things, certain flowers. We don't grow all kinds of flowers.
Mr. Gallagher: Give us an idea of your business now?
Mr. Poehlman: We grow principally roses, carnations and chrysanthemums.
Mr. Gallagher: Where do you sell those flowers?
Mr. Poehlman: They are sold through our sales store at 72 Randolph street.
106 Mr. Gallagher: Now, what I want to get at is the competition you are up against in the sale of your product. Where are your competitors, here in Chicago?
Mr. Poehlman: We have very strong competition in our line. There are perhaps one hundred different growers within a radius of 25 miles of Chicago, 20 to 25 miles of Chicago and we are all competing in the same market.
Mr. Gallagher: You all ship into the Chicago market?
Mr. Poehlman: Our product in nearly all cases goes to the Chicago market.
Mr. Gallagher: What part of your expense of operation is fuel?
Mr. Poehlman: About thirty per cent.
Mr. Gallagher: Do you have a private siding into your plant and greenhouses?
Mr. Poehlman: We have two sidetracks, but we also use a steam track.
Mr. Gallagher: The same charge is made on all coal that moves to you at Morton Grove?
Mr. Poehlman: Yes sir.
Mr. Gallagher: I would like to offer at this point the paid expense bill covering the shipment mentioned in the complaint. Do you want to see that, Mr. Dynes?
Mr. Dynes: It is paid by this complainant?
Mr. Gallagher: I will show that in a minute.

(The paper so offered and identified, was received in evidence and thereupon marked "Complainant's Exhibit No. 1, Witness Poehlman, received in evidence June 14, 1912," and is attached hereto.)

Mr. Gallagher: The paid expense bill offered in evidence shows car No. 51,979 soft coal, weight 99,200 pounds, rate 2, charges $19.84. Who paid those freight charges to the Chicago, Milwaukee & St. Paul, of $19.84 on this car?
Mr. Poehlman: Poehlman Brothers Company.
107 Mr. Gallagher: What is your custom in buying coal, do you buy it f. o. b. the point of origin?
Mr. Poehlman: We do sometimes. Sometimes we get a price

made us f. o. b. mines; sometimes f. o. b. Chicago and sometimes f. o. b. Morton Grove.

Examiner Pugh: What does that rate 2 mean there, two cents per hundred pounds, 40 cents a ton?

Mr. Gallagher: Yes, forty cents a ton. In order to show how these cars run, the revenue per car, I wish to introduce a half dozen of these paid expense bills.

Examiner Pugh: Not as a basis for reparation in this case, but simply in proof of your charge.

Mr. Gallagher: Yes, that the rates for the future should be reduced.

Examiner Pugh: Yes.

Mr. Gallagher: In our complaint, Mr. Examiner, we asked for reparation on all shipments for a period of two years prior to the filing of the complaint.

Examiner Pugh: But not to be proved at this hearing as I understand.

Mr. Gallagher: No, we state in our petition that all of the transactions are precisely alike, precisely like the one we set forth in our complaint.

Examiner Pugh: But in your prayer for relief I see you ask reparation in the sum of $14.88 with interest to be awarded to the complainant in this case on the shipment specifically described.

Mr. Gallagher: Yes.

Examiner Pugh: The proof of further reparation afterwards, if the Commission awards reparation, can be submitted after their decision and the case held open if necessary.

Mr. Gallagher: I specifically pray there that as to all ship-
108 ments within two years that we be awarded reparation, that is in the petition.

Mr. Gallagher: What portion of that coal would you say you buy f. o. b. Morton Grove?

Mr. Poehlman: I couldn't state that. I never made a division, so I don't know.

Mr. Gallagher: Would you say it is a very small proportion?

Mr. Poehlman: As compared with the whole it might be considered a small proportion.

Mr. Gallagher: Will you state, Mr. Poehlman, where your main competitors owning greenhouses and selling in the same market as against you here in Cook County are located?

Mr. Poehlman: There are a dozen located at Park Ridge; and a lot of them located at Maywood, perhaps another dozen; and there are about that—I don't know, there are so many now, new ones springing up lately; I know about six or eight at Des Plaines, and others at Elmhurst, Illinois, and there are quite a number of them situated around on the Northwestern at Greenwood station, there are several. Reinberg Brothers, Peter and George Reinberg at Rosehill.

109 Mr. Gallagher: Rosehill Station, Cook County?

Mr. Poehlman: Cook county, yes sir. Wietor Brothers at

Rogers Park and about a dozen others around there that I cannot recall just now by name.

Mr. Gallagher: Any at Summerdale?

Mr. Poehlman: Reinberg is at what used to be called Summerdale Station; it is now Rosehill, I believe.

Mr. Gallagher: Any at Edgewater?

Mr. Poehlman: I don't know of any at Edgewater.

Mr. Gallagher: Oak Park?

Mr. Poehlman: Yes, there are a number of them there.

Mr. Gallagher: Now, all these greenhouses, send their product into the same market in Chicago as you do, is that the situation?

Mr. Poehlman: Yes, sir.

Mr. Gallagher: Is the competition keen in the sale of flowers in this market or otherwise?

Mr. Poehlman: The competition is very keen.

Mr. Gallagher: Is it growing or lessening?

Mr. Poehlman: It is growing very rapidly.

Mr. Gallagher: To what extent then, is the freight charges on your fuel an item in transacting your business? Is it an important item or an unimportant item?

Mr. Poehlman: It is a very important item of expense to us.

Mr. Gallagher: In a general way, Mr. Poehlman, do you know what these competitors of yours are getting in the way of deliveries of coal? The charges they pay plus the Chicago rate? You pay forth cents plus the Chicago rate, is that the situation?

Mr. Poehlman: Yes, sir.

Mr. Gallagher: On all coal?

Mr. Poehlman: On all except some Illinois coal, I
110 & 111 believe, on which there is an absorption of ten cents a ton.

Mr. Gallagher: Take this West Virginia coal which you say is about 75 per cent of your fuel. As I understand that you pay forty cents in addition to the Chicago rate, is that right?

Mr. Poehlman: I do.

Mr. Gallagher: On all of that coal.

Mr. Poehlman: On all of that coal, on all eastern coal.

Mr. Gallagher: What do your competitors get?

Mr. Poehlman: I understand that Des Plaines has the Chicago delivery rate which is 40 cents less than ours. Park Ridge likewise; Greenwood avenue, which is west of Evanston has a free delivery, the florists there are getting that.

Examiner Pugh: Is this defendant company involved in all these deliveries?

Mr. Poehlman: No.

112 Mr. Gallagher: Where is your coal transfered to the defendant, the Chicago, Milwaukee & St. Paul?

Mr. Poehlman: At Galewood.

Mr. Gallagher: The Chicago rate governs the movement up as far as the Galewood station?

Mr. Poehlman: It does.

113 Mr. Gallagher: And the forty cents a ton you pay is from Galewood Station to Morton Grove, is that right?

Mr. Poehlmann: Yes.

Mr. Gallagher: What is the distance?

Mr. Poehlman: About 12 miles.

Mr. Gallagher: Does that come out to you in a through train, or does it come out to you by special engine just for your service?

Mr. Poehlman: No, I think the coal comes in a local train.

Mr. Gallagher: That passes farther north?

Mr. Poehlman: Farther north, yes.

Mr. Gallagher: And your coal is placed out at your siding at Morton Grove?

Mr. Poehlman: Yes, at our siding, and some of it on the business track, that is the railroad business track. Most of it is put on our siding.

Mr. Gallagher: Just one more question: You are bringing a complaint here, Mr. Poehlman, on the ground that this charge for this movement is excessive. How important a factor is the switching charge of forty cents a ton in the expenses of your business?

Mr. Poehlman: Well, it practically means that we are paying $12,000 a year more for freight, figuring on the basis that our competitors at this place would use an equal amount of coal per year. I say approximately $12,000; it depends upon the quantity that is used. The amount of coal that is used varies according to the weather, according to the winter.

Mr. Gallagher: What other freight do you get there in any considerable quantity?

114 Mr. Poehlman: We have a lot of manure.

Mr. Gallagher: Where does your manure come from, the stock yards?

Mr. Poehlman: Comes from the stock yards, some of it, and other is loaded along the Pan Handle somewhere, I believe; I don't know just exactly where it is, at Union street or Green street. I don't know just exactly where it is loaded.

Mr. Gallagher: About how many cars a day do you get of that, or how does it average?

Mr. Poehlman: We get about 450 to 500 carloads of that a year.

Mr. Gallagher: The same rate applies on manure as coal?

Mr. Poehlman: Yes, except that we have to pay two and a half cents a hundred pounds on manure from the stock yards.

Mr. Gallagher: I think that is all.

Examiner Pugh: Are the various points where complainant's competitors are located indicated on that map?

Mr. Gallagher: I have drawn up a special map to show that when I get another witness on the stand.

Examiner Pugh: Very well. Cross examine.

Cross-examination:

Mr. Dynes: One of your competitors that you spoke of is located in Elmhurst. What was the name of that one?

Mr. Poehlman: Mr. Windlind & Kimmel.

Mr. Dynes: That is not in the same county that Chicago is in, is it? Elmhurst is in Dupage County, is it not?

Mr. Poehlman: I don't know, I am sure.

Mr. Gallagher: Do you know what the distance is from Morton Grove to the station on the St. Paul line in the city, what its railroad distance is from its principal station in the city of Chicago out to Morton Grove?

Mr. Poehlman: From the union depot?

115 Mr. Dynes: Yes.

Mr. Poehlman: About 14.3 miles, I guess, as near as I can remember.

Mr. Dynes: Now, it is true that Morton Grove is located north of and outside of the switching district as it is represented on this map which you introduced in evidence?

Mr. Poehlman: Yes.

Mr. Dynes: Of any road?

Mr. Poehlman: Yes, that is true.

Mr. Dynes: And about 14 miles from the union station of the road that serves you?

Mr. Gallagher: I think that is immaterial; if the movement is from Galewood how far it is from the union station.

Mr. Dynes: And about 12 miles from the point where the coal is transferred to the road that serves you, is it?

Mr. Poehlman: Yes sir, that is my recollection.

Mr. Dynes: Your grievance is in that the switching district did not extend two miles further in your direction, is it not?

Mr. Poehlman: No sir, it is not. I am not interested in the switching district; I am interested in the rate.

Mr. Dynes: Then you do not claim that the coal should be switched up to your place?

Mr. Poehlman: No, I don't make that claim at this time.

Mr. Dynes: You question the reasonableness of the rate as a traffic proposition in and of itself, do you?

Mr. Poehlman: Yes, sir.

Mr. Dynes: And this coal is brought to you in regular course of transportation, not by a switch engine, but in a regular way freight traveling under orders, running along the line of the company's road?

116 Mr. Poehlman: I am not positive about that. Sometimes we have a great deal of freight coming in and they may take a whole train-load out. We have had almost train-loads of coal come out at one time. I don't know whether you would call that being handled by a local train or a switch train. I don't think that they ever come out specially to serve us with coal. In my opinion I would say that the coal is handled by a regular local train crew.

Mr. Dynes: Traveling along the line of the company?

Mr. Poehlman: Traveling along the line and spotting the cars wherever they are required.

Mr. Dynes: How large a service track have you there?

Mr. Poehlman: For our use?

Mr. Dynes: Yes, how many coal cars can be placed?

Mr. Poehlman: I think we could spot about 35 or 40 cars on our tracks at least.

Mr. Dynes: And unload them without moving them?

Mr. Poehlman: No, not altogether.

Mr. Dynes: You mean you have got car room for that many cars?

Mr. Poehlman: We have unloading places. We have sheds that we have to unload this coal into and we have manure pits that we unload manure into and the cars have to be spotted occasionally to reach those points, to reach those particular unloading spots.

Mr. Dynes: What is the distance from the Union Stockyards where the manure is loaded out to your plant?

Mr. Poehlman: I am not familiar with that distance?

Mr. Dynes: You are not complaining of the rates on manure in this particular complaint, are you?

Mr. Poehlman: In my judgment the rate is high, too high.

117 Examiner Pugh: But the complaint involves rates on coal only?

Mr. Poehlman: Coal only.

Mr. Gallagher: That is true, but we do not want to appear here as acquiescing to the ra-e on manure.

Examiner Pugh: Of course, not.

Mr. Dynes: What is the size and acreage of your plant?

Mr. Poehlman: We have about 35 or 37 acres covered with glass and buildings.

Mr. Dynes: Do you handle shrubs as well as flowers?

Mr. Poehlman: No, sir.

Mr. Dynes: No nursery business?

Mr. Poehlman: No, sir.

Mr. Dynes: Do you supply any market other than Chicago and suburbs?

Mr. Poehlman: What is that question?

Mr. Dynes: Do you supply any market other than the Chicago market for cut flowers?

Mr. Poehlman: We consign from our store to outside points, Chicago is our distributing point.

Mr. Dynes: How far out do you reach?

Mr. Poehlman: We reach down into Texas and Louisiana.

Mr. Dynes: You sell other flowers than cut flowers, do you?

Mr. Poehlman: No sir—plants, we sell plants.

Mr. Dynes: Do you deal in seeds?

Mr. Poehlman: No, sir.

Mr. Dynes: That is all.

Mr. Gallagher: Just a word about the nature of your complaint. Mr. Dynes asked you for the exact nature of your complaint. Let's see if I understand your answer. You are complaining on the ground that the charge for this service of the Chicago, Mil-

118 waukee & St. Paul from Galewood to Morton Grove is too high?

Mr. Poehlman: Yes, sir, I do.

Mr. Gallagher: And is discriminatory against you?

Mr. Poehlman: It is.

Mr. Gallagher: How far the switching limits may enter into the determination of that question is not a matter that you are interested in?

Mr. Poehlman: It does not concern me.

Mr. Gallagher: You will leave that to the Commission to determine, isn't that the idea?

Mr. Poehlman: Yes sir.

Mr. Gallagher: That is all.

Examiner Pugh: Stand aside.

(Witness excused.)

JOHN P. DRENNAN was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Gallagher: What is your name, please?

Mr. Drennan: John P. Drennan.

Mr. Gallagher: Have you examined the tariffs in connection with switching charges on coal in and around Chicago for the purpose of appearing here and testifying?

Mr. Drennan: Yes, sir.

Mr. Gallagher: Now, on what basis is coal delivered, eastern coal and Indiana and Illinois coal to Des Plaines in Cook county? In other words, is it delivered on the Chicago basis or something plus the Chicago rate?

Mr. Dynes: I do not think that is material, because that is not on the line of this defendant.

Examiner Pugh: Let that objection be noted.

Mr. Gallagher: I think it is material.

Mr. Drennan: Do you want to Chicago?

119 Mr. Gallagher: No, just want to know on what basis is it delivered to Des Plaines, on the Chicago basis, is it?

Mr. Drennan: On eastern coal it is.

Mr. Gallagher: How about Indiana and Illinois coal?

Mr. Drennan: Coal from Illinois is also.

Mr. Gallagher: How about Park Ridge in Cook county?

Mr. Drennan: The Chicago rate applies.

Mr. Gallagher: Norwood park?

Mr. Drennan: The Chicago rate applies.

Mr. Gallagher: Take the charges of the Chicago, Milwaukee & St. Paul. Describe the movement from Galewood to Edgewater, Buena Park and North Edgewater. Will you briefly describe and point out that movement? If the Examiner will permit me I will withdraw Mr. Drennan and call Mr. Harris. I think he is more familiar with this situation.

W. H. HARRIS was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Gallagher: What is your name, please?

Mr. Harris: W. H. Harris.

Mr. Gallagher: What is that switching movement from Galewood to Buena Park, what is the distance?

Mr. Harris: The movement would be from Galewood by way of Pacific Junction and across to Clybourne Junction and then up on this Evanston branch of the St. Paul to Edgewater, which would be a distance of about 11½ miles.

Mr. Gallagher: What is the charge for moving coal by the St. Paul road?

Mr. Harris: The delivery would be made at Galewood and
120 the movement would be from Galewood to Edgewater, and the switching charge is 30 cents per ton with an absorption by the original road.

Mr. Gallagher: Of how much?

Mr. Harris: Of $4 per car of 30 tons, and 10 cents excess over 30 tons.

Mr. Gallagher: In making that movement on coal, does that go through the Division Street Yards?

Mr. Harris: I believe it does. It would be necessary for it to go through the Division Street Yards, coming over the Blooomingdale Avenue road.

Mr. Gallagher: A very congested part of Chicago?

Mr. Harris: A very congested part of Chicago, go right through the heart of the city practically and then on up.

Mr. Gallagher: The consumers at those stations then pay 20 cents a ton?

Mr. Harris: That would be according to their tariffs. The St. Paul is 30 cents a ton with an absorption by the eastern road of $4 a car.

Mr. Gallagher: Then they pay in addition to the Chicago rate 20 cents a ton?

Mr. Harris: Twenty cents a ton plus excess over 30 tons.

Mr. Gallagher: On coal.

Mr. Harris: On coal.

Examiner Pugh: Have you the tariff authorities?

Mr. Harris: Yes.

Examiner Pugh: Just refer to the tariffs showing that.

Mr. Gallagher: Refer to the tariffs showing that, please.

Mr. Harris: At Edgewater that would be 30 cents and that would be referred to tariff I. C. C. No. B-2506.

Examiner Pugh: St. Paul tariff?

121 Mr. Harris: St. Paul tariff. And Lake Shore Tariff, showing the absorption *on* one instance, would be I. C. C. No. A-2802, on delivery to the C., M. & St. P. Railroad, deliveries as shown below in group B will absorb the actual switching charge of the C., M. & St. P. Railway in accordance with the tariff of the C.,

M. & St. P. Railway as shown on page 3, but not to exceed $4 per car except when the delivery is made by the Union Stockyards——

Examiner Pugh: You need not repeat all that, but just give the reference.

Mr. Gallagher: Does that apply to the stations to which I have questioned you about?

Mr. Harris: Yes, Edgewater, Buena Park and Argyle.

Mr. Gallagher: Has that rate recently been advanced.

Mr. Harris: As far as I know it has been advanced. I think the old tariffs will show that. This tariff is effective May 1, 1912.

Mr. Gallagher: Prior to that time the rate was 20 cents was it?

Mr. Harris: As far as I know.

Mr. Gallagher: The charge was 20 cents?

Mr. Harris: The charge was 20 cents.

Mr. Gallagher: Have you a tariff showing that, Mr. Drennan? You will admit that, will you, Mr. Prendergast?

Mr. Prendergast: Twenty cents.

Mr. Gallagher: We can agree to that then.

Mr. Prendergast: On Edgewater, you mean?

Mr. Gallagher: Yes.

Mr. Prendergast: I haven't the reference, but that is correct. It has been advanced in the last couple of months.

122 Mr. Gallagher: In the last couple of months you advanced it from 20 cents to 30 cents?

Mr. Prendergast: Yes.

Mr. Gallagher: Prior to that this rate of 20 cents had been in effect for quite a period of time?

Mr. Prendergast: Yes.

Mr. Gallagher: What is the rate from Chicago to Milwaukee by the defendant carrier on coke?

Mr. Harris: From their tariffs it is a 45-cent rate.

Mr. Gallagher: What is the distance?

Mr. Harris: About 85 miles, I believe.

Mr. Gallagher: Refer to that tariff.

Mr. Drennan: I. C. C. No. B-1962.

Mr. Gallagher: Page?

Mr. Drennan: Page 18, index No. 1.

Mr. Prendergast: Is that a straight rate or proportional?

Mr. Drennan: Straight.

Mr. Gallagher: Have you looked up to see what proportion the rate on coke as a rule bears to the rate on bituminous and anthracite coal?

Mr. Harris: We have.

Mr. Gallagher: What do you find on that?

Mr. Harris: There is a rate of 60 cents a ton from Chicago to Milwaukee on bituminous coal.

Mr. Gallagher: Have you examined these rates to Winona, La Crosse and Madison?

Mr. Harris: I have not.

Mr. Drennan: I have.

Mr. Gallagher: Give those rates. The purpose of this question

is to show that the rate on coke is universally higher than the rate on coal; and that the rate on coke to Milwaukee is 45 cents,
123 a distance of 85 miles and a charge here of forty cents for a movement of 12 miles on coal. Give the tariff showing that.

Examiner Pugh: You have two witnesses on the stand at the same time, but go ahead.

Mr. Gallagher: I am trying to shorten it.

Mr. Drennan: Will you give me the points. There are a couple of Northwestern points on that list I believe.

Mr. Harris: The rate to Winona via the defendant's line is $1.35.

Mr. Gallagher: The rate on what?

Mr. Harris: Bituminous coal.

Mr. Gallagher: What is the rate on coke.

Mr. Harris: The rate on coke is $1.60 to the same point.

Mr. Gallagher: Give the tariff?

Mr. Drennan: I. C. C. B-1962.

Mr. Gallagher: Here are these rates. Just read these rates into the record.

Examiner Pugh: Can't you just hand in that slip and let that be introduced as an exhibit?

Mr. Gallagher: No, there are a number of memoranda on there.

Mr. Harris: We could tear that off.

Examiner Pugh: If it is short read it into the record.

Mr. Gallagher: Have you examined the rates on coke and the rates on soft coal by the defendant carrier for the purpose of comparing those rates?

Mr. Harris: I have.

Mr. Gallagher: What is the result of that comparison?

Mr. Harris: Why, I find that on coke against bituminous coal there is a difference of about 25 cents a ton higher rate on coke.

124 Mr. Gallagher: Than on bituminous coal?

Mr. Harris: Than on bituminous coal, yes. Now, you wish me to read off these points and the rates?

Mr. Gallagher: No, that is enough. Have you looked up the rate to Mineral Point, Wisconsin, from Chicago, on the line of the defendant carrier?

Mr. Drennan: Yes, sir.

Mr. Gallagher: On coal screenings?

Mr. Harris: We have looked that up and we find the rate on coal to Mineral Point is 60 cents, on soft coal, screenings and dust.

Mr. Gallagher: A distance of over 200 miles?

Mr. Harris: It is a distance of 190½ miles, I believe, by the mileage from the time tables.

Mr. Gallagher: Refer to the tariff on that.

Mr. Drennan: B-1962.

Mr. Harris: What page?

Mr. Drennan: 113.

Mr. Gallagher: What item?

Mr. Drennan: Item No. 72.

Examiner Pugh: What is the I. C. C. number?

Mr. Drennan: I gave that; I. C. C. B-1962.

Mr. Gallagher: Will you take now the tariff of the Belt Railway in Cook County, and show the charges for moving cars of coal?

Mr. Harris: As I understand it, you want to show the movement of coal from an industry on the Belt to an industry on the Belt, and the charge that is made for that movement?

Mr. Gallagher: Yes, what are the charges of the Belt for moving coal in Cook County?

Mr. Dynes: I object to that; that is seeking to compare a switching rate with a line haul. It is entirely an unfair com-
125 parison of the switching rates within a switching district, to compare those rates with a line haul.

Examiner Pugh: The objection is in the record. Proceed.

Mr. Gallagher: It is a question of words, I think, in this case.

Examiner Pugh: Proceed.

Mr. Harris: Coal that would be loaded at the Lehigh Valley Coal Company docks say, at South Chicago, and shipped to a consignee at West 46th street, on the Belt line, a distance of about 18 miles they make a charge of 15 cents per ton. They would consider that from industry to industry on their line. That would be found by referring to I. C. C. No. 18, item No. 9.

Mr. Gallagher: Is that whole movement in Cook County?

Mr. Harris: That whole movement is in Cook County. That was a minimum of 80,000 pounds to the car on which that charge of 15 cents per ton is made.

Take another example of the same movement of Philadelphia Reading Coal & Iron Company coal they have a dock at South Chicago at 95th street and the river, and the Belt Railroad Company would make a movement to their yards located at West 46th street or West Chicago avenue, which is a distance of about 20 miles. They make that movement for 15 cents a ton. The same charge as in the other case. Refer to I. C. C. Tariff No. 18, item No. 9.

Mr. Gallagher: Any other cases there that you have got?

Mr. Harris: Well, that applies to connecting lines to industries on the Belt where the movement would be made from Pullman Junction, as for instance a movement was made say from a
126 line like the Erie Railroad which would be delivered to the Belt at Pullman Junction and hauled to West 46th street or West Chicago Avenue and the Belt *make* that movement of about 15 miles I should judge at ten cents a ton.

Mr. Gallagher: Are these isolated cases or a great number of cases?

Mr. Harris: The majority, the great number of cases.

Mr. Gallagher: Are of that kind?

Mr. Harris: Yes, a great number.

Mr. Gallagher: Are there any stations on the Chicago, Milwaukee & St. Paul Railway, their terminals in Chicago or Cook County, that receive deliveries of coal on the Chicago basis?

Mr. Harris: As I understand it, Mayfair Station would receive coal on the Chicago basis for a minimum weight of 60,000 pounds and ten cents per ton excess over that.

Mr. Gallagher: How about Franklin Park, Fullerton avenue station, Belmont Avenue station, Addison Street Station?

Mr. Dynes: Let us get one of those at a time. What about Franklin Park?

Mr. Harris: Franklin Park, I am not familiar with that point. Where is that point?

Mr. Gallagher: Look it up, Mr. Harris, in the tariff.

Mr. Harris: At Franklin Park there would be a switch. What is the St. Paul switching charge on that? Franklin Park is the other side of Galewood, I believe.

Mr. Dynes: About five miles west of Galewood.

Mr. Harris: About five miles we-t of Galewood, yes. That tariff reads 35 cents a ton and a minimum of 40,000 pounds. That delivery is not made on the Chicago rate. There is an ab-
127 sorption there on that 35 cents by the eastern line, I take it, from this other tariff of the Lake Shore.

Mr. Gallagher: Of how much?

Mr. Harris: At Franklin Park, $4 a car.

Mr. Gallagher: Leaving then what, that the consumers have to pay at that point in addition to the Chicago rate?

Mr. Harris: I don't quite catch that.

Mr. Gallagher: What do the consumers pay at Franklin Park in addition to the Chicago rate for coal?

Mr. Harris: They would pay 35 cents a ton plus the Chicago rate, less $4 a car which would be absorbed by the delivering line.

Mr. Gallagher: Take Fullerton Avenue station. Is that station on the Chicago, Milwaukee & St. Paul in Chicago?

Mr. Harris: Fullerton Avenue?

Mr. Gallagher: Yes.

Mr. Harris: It is.

Mr. Dynes: What is the rate?

Mr. Harris: I believe it takes the Chicago rate.

Mr. Gallagher: Look it up. Get it accurate or it is no account.

Mr. Drennan: Fullerton avenue, Chicago rate.

Mr. Harris: Where is it on the St. Paul?

Mr. Dynes: Is there any such station? Isn't that merely switching territory?

Mr. Harris: That is considered switching territory. I believe the Chicago rate applies there.

Mr. Gallagher: What is the distance from Galewood to that station?

Mr. Harris: I haven't got the distance on that point.

128 Mr. Dynes: About six and a half miles.

Mr. Gallagher: Six and a half miles. Take Belmont avenue station.

Mr. Harris: That is practically the same as Fullerton avenue.

Mr. Gallagher: Chicago basis applies on deliveries of soft coal?

Mr. Harris: Chicago basis apply on a minimum of 60,000 pounds excess ten cents a ton over that.

Mr. Gallagher: Addison street station?

Mr. Harris: The same thing.

Mr. Gallagher: Grayland?

Mr. Harris: Grayland would be the same thing.

Mr. Dynes: Where is Grayland?

Mr. Harris: It is just the other side of Pacific Junction.

Mr. Gallagher: Now, refer to the tariffs showing these stations you have just been referring to and the switching charges and the absorptions.

Mr. Brennan: Lake Shore Tariff I. C. C. No. A-2802. That rate that applies to Franklin Park of 35 cents, as was stated, there is, I see, a switching rate of 20 cents there.

Mr. Gallagher: Franklin Park?

Mr. Drennan: Yes.

Mr. Gallagher: That is an absorption of $4 a car?

Mr. Harris: Yes.

Mr. Dynes: On what line?

129 Mr. Drennan: St. Paul.

Mr. Gallagher: Give the tariff number showing that.

Mr. Drennan: I. C. C. No. B-2435 showing a switching rate of one cent per hundred pounds.

Mr. Harris: St. Paul.

Mr. Dynes: Is that the defendant company's tariff?

Mr. Harris: Yes.

Mr. Gallagher: What page?

Mr. Drennan: Page 14.

Mr. Gallagher: What item?

Mr. Drennan: Item No. 5.

Mr. Gallagher: Does this tariff to which you have just referred give all of the switching charges of the defendant carrier in Cook county?

Mr. Drennan: Not all in Cook county.

Mr. Gallagher: What other tariff of the defendant carrier——

Mr. Drennan: Their regular freight tariff.

Mr. Gallagher: Give the reference.

Mr. Drennan: C. M. & St. P. I. C. C. No. B-2506.

130 Mr. Gallagher: What is the charge for moving coal from Galewood on the defendant carrier's line to Buena Park Station on the defendant carrier?

Mr. Drennan: 20 cents a ton.

Mr. Gallagher: What is that distance?

Mr. Harris: About nine and a half miles I should judge.

Mr. Gallagher: Is that near Edgewater?

Mr. Harris: That is about a mile and a half south of Edgewater, nearer to Galewood.

Mr. Gallagher: What is the absorption there?

Mr. Harris: $4 a car.

Mr. Gallagher: So that consumers of coal at Buena Park pay

about ten cents a ton in addition to the Chicago rate, is that the situation?

Mr. Harris: That is the situation.

Mr. Gallagher: Where are Butler Brothers located, on the Chicago, Milwaukee & St. Paul?

Mr. Harris: Butler Brothers are located on the Randolph Street bridge, on the Chicago, Milwaukee & St. Paul.

Mr. Gallagher: Is coal moved over there from Galewood Station?

Mr. Harris: As I understand it is moves by way of Galewood Station, yes, sir.

Mr. Gallagher: What is the charge?

Mr. Harris: The Chicago rate would apply for 60,000 pounds plus excess of ten cents a ton.

Mr. Gallagher: Refer to the tariff showing that?

Mr. Harris: That would be considered Union Street, isn't ot, or Union Station? Which is it?

131 Mr. Drennan: Union Street, Butler Brother, it is way-billed Union Street, I. C. C. No. 2435.

Have you any other rates there you want to put in, Harris? The rate to Maywood, what is that?

Mr. Harris: The rate to Maywood would be on the Northwestern, wouldn't it?

Mr. Gallagher: There are a number of competitors of the complainant located at Maywood. Now, on what basis do they get coal?

Mr. Dynes: It is on the Northwestern and on the Great Western, on the Belt and on the Wisconsin Central of Soo Line; but it is not on the Chicago Milwaukee & St. Paul Line.

Mr. Harris: For delivery that would be made on eastern coal they deliver at Maywood at the Chicago rate. That is by the Lake Shore Line.

132 Mr. Gallagher: Show the tariff for that?

Mr. Harris: Lake Shore Tariff I. C. C. No. A2802.

Mr. Gallagher: Is the same true as to Oak Park?

Mr. Harris: Oak Park the same, Chicago rate applies and the same tariff.

Mr. Gallagher: You have given Des Plaines as being on the Chicago basis, have you?

Mr. Harris: There is Des Plaines, Greenwood Avenue, Edison Park, Norwood Park, Oak Park, Maplewood, Jefferson Park, Park Ridge, Peterson Avenue, Chicago, Proviso, Ravenswood, River Forest, Weber.

Mr. Gallagher: Now, as I understand your evidence at these points the consumers of coal receive deliveries on the basis of the rates to Chicago.

Mr. Harris: Yes, both on eastern and western coal. There is a C., B & Q. rate. I shall refer to their tariff.

Mr. Gallagher: Yes, give their tariff.

Mr. Harris: That would be C., B. & Q. Tariff G. F. O. No. 6407-D. This tariff shows where they make through rates to these points.

Mr. Gallagher: Give the page and item.

Mr. Harris: It would be page 6 and to the points I mentioned there it would run from item 29 to item 46.

Mr. Gallagher: Of what tariff?

Mr. Harris: Of the C., B. & Q. tariff, the number which I just gave.

Mr. Gallagher: Where is the Mark Manufacturing Company located?

133 Mr. Harris: At Greenwood Avenue just this side of Evanston. It is in Evanston, Greenwood is on the southern boundary of Evanston on the Northwestern.

Mr. Gallagher: On what basis is coal delivered to Greenwood?

Mr. Harris: On the Chicago basis, Greenwood Avenue Station.

Mr. Gallagher: That is via the Northwestern.

Mr. Harris: That is via the Northwestern, Chicago & Northwestern.

Mr. Gallagher: How far north does this 40 cent rate extend beyond Morton Grove?

Mr. Harris: It extends to a point about five miles, a place called Shermerville, I believe.

Mr. Dynes: On the Milwaukee Line?

Mr. Harris: On the Milwaukee line, the third station beyond Morton Grove.

134 Cross-examination:

Mr. Dynes: I would like to ask the witness if he understands the meaning of the reciprocal switching rates or tariffs that are applied by the railroads themselves from switching districts in Chicago and vicinity?

Mr. Harris: That is, if I understand the meaning of the word reciprocal?

Mr. Dynes: Yes.

Mr. Harris: I do, yes sir.

135 Mr. Dynes: What is the meaning of reciprocal as used there?

Mr. Harris: I would take it that the two roads have a joint agreement as a basis of switching back and forth.

Mr. Dynes: And on that reciprocal basis it is a case of trading one accommodation for another accommodation?

Mr. Harris: That is what I would say, yes.

Mr. Dynes: And the money consideration is not the only consideration that passes between the roads in that connection?

Mr. Harris: That I couldn't say, but I would take it for granted that it would be such.

Mr. Dynes: It contemplates not only this one service on the line and rails of one road, but a similar service on the rails of the other road when the second road may require such, does it not?

Mr. Harris: That is what I would consider it.

Mr. Dynes: Loading facilities, road-bed, and all that goes to make up railroad transportation?

Mr. Harris: Yes.

Mr. Dynes: And that is a dif-erent switching rate than the inter-industry rate, is it not? Or inter-plant transportation?

Mr. Harris: I would consider it such.

Mr. Dynes: And it is a lower rate, is it not?

Mr. Harris: That I couldn't say. This reciprocal arrangement of two roads; would there be any rates published on that, if two roads have the reciprocal arrangement or reciprocal rates?

136 Mr. Dynes: Do you know what you have been comparing reciprocal switching with line hauls in some of these comparisions that you have made? Reciprocal switching charges with line haul charges?

Mr. Drennan: I didn't know it, no sir.

137 Mr. Dynes: The rate that the Belt Line charges in a congested center such as the Belt Lines serve is usually lower than the rate that a line traveling through the country and serving a vast territory charges, is it not?

Mr. Drennan: Yes, sir.

Mr. Dynes: The one is organized just for that little service within that congested district, and the other has to take care of an equipment for serving a broad country?

Mr. Drennan: Yes.

Mr. Dynes: This coal dust that you spoke of being shipped up to some point in Wisconsin——

Mr. Drennan: Yes.

Mr. Gallagher: Mineral Point.

Mr. Dynes: Mineral Point in Wisconsin, is not a commodity used as a fuel but as a flux in a smelter, is it not?

Mr. Drennan: I could not tell you that.

Mr. Dynes: You don't know that it is used as a fuel?

Mr. Gallagher: I object, because the Commission has many times ruled that the use of a commodity is not material as affecting a rate.

Examiner Pugh: The objection is in the record.

138 WILLIAM E. PRENDERGAST was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Dynes: State your name.

Mr. Prendergast: William E. Prendergast.

Mr. Dynes: And your connection with the Chicago, Milwaukee & St. Paul?

Mr. Prendergast: Assistant General Freight Agent, Chicago.

Mr. Dynes: How long have you been in the traffic business with railroads?

Mr. Prendergast: About 28 years, from the beginning.

139 Mr. Dynes: You heard these three witnesses testify, did you?

Mr. Prendergast: Yes, sir.

Mr. Dynes: Are you familiar with the character of the district through which and in which the tracks of the Chicago, Milwaukee & St. Paul Railway Company line that are involved in serving the

plant of the complainant at Morton Grove with the coal shipments in question run?

Mr. Prendergast: Yes, sir.

Mr. Dynes: What is the nature of that district in respect to whether it is terminal property in particular or in general, what is the nature of it?

Mr. Prendergast: The coal is handled through the most expensive terminal we have to begin with, and then it is handled over the heaviest tonnage division we have.

Mr. Dynes: And a part of it is in the Chicago terminal is it?

Mr. Prendergast: A great deal of it in the Chicago terminal yes sir.

Mr. Dynes: Coal received at Galewood is carried east to Pacific Junction is it to get to the connection with the northwest line that runs up to Morton Grove?

Mr. Prendergast: Yes, sir.

Mr. Dynes: And that is a distance of four or five miles in the congested part of the city is it?

Mr. Prendergast: Three miles from Galewood to Pacific Junction.

Mr. Gallagher: Let's see, did you say that is in the congested part of the city?

Mr. Prendergast: I did not say that, no. I just answered as to the distance.

Mr. Dynes: I probably ought not to have said a congested part of the city, but within the city.

140 Mr. Prendergast: Within the city, yes. Insofar as our tracks are concerned there I would say they are congested because that is the line into the Galewood yards from Pacific Junction where all the trains have to come from the north or any other way to get into these yards.

Mr. Dynes: I used the word congestion in respect to the city instead of to the traffic as I should have. However, you have cleared me on that.

Mr. Prendergast: Yes.

Mr. Dynes: Now, at Pacific Junction it is transferred to the main line for main line delivery at Morton Grove, is it?

Mr. Prendergast: They connect with the main line at Pacific Junction through a Y.

Mr. Dynes: What part of that main line lies within the city of Chicago?

Mr. Prendergast: Up as far as Edgebrook. Edgebrook is in the city. The third station south of Morton Grove.

Mr. Dynes: And that is about five or six more miles, is it?

Mr. Prendergast: I should say six miles farther to Edgebrook from Pacific Junction.

Mr. Gallagher: Mr. Poehlman said that is the first station south of Morton Grove.

Mr. Dynes: Yes, Edgebrook is the first station south.

Mr. Prendergast: Is it? I thought Golf came in there.

Mr. Poehlman: No, Golf is north of Morton.

Mr. Prendergast: Yes, that is correct.

Mr. Dynes: All of this district is the heaviest traffic part of the defendant's system?

Mr. Prendergast: Yes, it is the heaviest tonnage division we have.

141 Mr. Dynes: What is the fact in regard to the circumstance of a 20-cent delivery at Franklin Park that was mentioned?

Mr. Prendergast: We are forced to extend that switching limit out to Franglin Park on account of our new yards at Manheim. We know there is nothing in it and it costs more than that, but on account of receiving coal and other freight from the Indiana Harbor Belt at Franklin Park and Godfrey Yard, which is Manheim, we have to do it.

Mr. Gallagher: I move to strike out that part of the answer which refers to the cost of traffic unless the facts and figures showing the cost are given.

Mr. Dynes: You ought to let him get it all in.

Examiner Pugh: Your motion is in the record. Go on now and complete your answer.

Mr. Prendergast: I have just about finished.

Mr. Dynes: That is in the immediate vicinity of Franklin Park, is it?

Mr. Prendergast: Yes, sir, just beyond Franklin Park the tracks connect.

Mr. Dynes: What are the facts in regard to the reciprocal switching comparisons made by these witnesses? Will you comment on those?

Mr. Prendergast: They were comparing a road haul figure or industrial switching rate you might say with the reciprocal switching which we perform for a lower figure for connecting lines in view of the fact that they perform the same service for us when the shipments are reversed.

142 Examiner Pugh: Yes, I just wanted to get the record clear.

Mr. Dynes: In order to get it in the form of sworn testimony I will ask to have the court's question read. Is that rate involved between Morton Grove and Chicago a switching rate or a line haul rate?

Mr. Prendergast: A line haul rate.

Mr. Dynes: You understand that covers from Galewood in Chicago, too?

Mr. Prendergast: Yes, sir.

Mr. Dynes: In your judgment as a traffic man is this rate to Morton Grove which is complained of any more than a reasonable rate under the conditions under which the service is rendered?

Mr. Gallagher: I object, because the witness has not qualified to show what is a reasonable rate.

Examiner Pugh: Your objection is in the record. Let the question be answered.

Mr. Prendergast: Under the circumstances we do not consider that—I do not consider that rate unreasonable.

Mr. Dynes: Do you consider that the reduction asked for would be an unreasonably low or non-compensatory rate?

Mr. Prendergast: Yes, sir.

143 Mr. Dynes: Will you refer to your memorandum, Mr. Prendergast, please, and give us the limits of the Chicago, Milwaukee & St. Paul Railway Company switching district in its Chicago terminals?

Mr. Prendergast: The Chicago, Milwaukee & St. Paul switching territory in Chicago commences at Lake Michigan and Irving Park Boulevard to 40th avenue; thence north along 40th avenue to Montrose Boulevard; thence west along Montrose Boulevard to Central avenue; thence south along Central Avenue to Fullerton avenue; thence west along Fullerton avenue to Austin avenue; thence south along Austin avenue to North Avenue; thence east along North avenue to 48th avenue. That is where we would stop.

144 Mr. Dynes: Now, in regard to that delivery to Butler Brothers at the Union Street yards, how far from the main station of the Chicago, Milwaukee & St. Paul Railway Company of Chicago is that delivery made approximately?

Mr. Gallagher: I object because it is immaterial: coal is not delivered to a passenger station.

Examiner Pugh: Let the objection be noted.

Mr. Prendergast: Butler Brothers are located two blocks north of the passenger station.

Mr. Dynes: Do you have anything further you desire to add.

Mr. Prendergast: Yes, I have something further to put in. I wanted to say that this coal for Peohlman Brothers is all handled on what we call C. & M. Local 91, under regular train orders. We have a great deal of trouble with it because Poehlman Brothers buy it in large lots, I presume when the market is low, and they order this stuff over to Galewood yards. At one time several months ago I recollect we had about eighteen cars up at Morton and nineteen in the yards. We were compelled to switch back and forth——

Mr. Gallagher: When did this happen?

145 Mr. Prendergast (continuing): We were compelled to switch back and forth in there, in getting our own business through the yard. They are asking for special service at all times, they keep after us for prompt attention, and that is the reason I said I did not think the 40-cent rate was unreasonable. This coal comes to us in foreign cars; we have to pay per diem at the rate of 30 cents a day from March until July of each year, and 35 cents a day from August to February each year and that eats up a lot of the profit when it is left to lie around in the yards, and you cannot collect for car service because you have not set the cars where they want them. They testified that cars were set in there and spotted time and time again at their own plant. Mr. Poehlman testified that it was necessary to respot them. When this Chicago switching arrangement was made to take in Edgewater and some of these points on ordinary commodities it was understood by the executive officers of the various

roads who made the arrangement with the Chicago Association of Commerce, and with the Illinois Manufacturers' Association that there would be no change whatever made in coal rates. Everybody admitted that the rate- at which coal was handled in the Chicago district were too low, but there was no change made, and that is the reason why the switching tariffs don't cover coal.

Mr. Gallagher: I move to strike out that answer because the opinions and the deeds of the members of these distinguished organizations cannot affect the rights of the petitioner in this case to have a fair and reasonable rate.

Examiner Pugh: That is in the record.

146 Mr. Prendergast: The Chairman of the Illinois Manufacturers' Association said he had authority to talk for the coal men just the same as the lumbermen.

Mr. Gallagher: But we are in the greenhouse business.

Mr. Prendergast: And Mr. Poehlman, I believe, was a member of Mr. Glenn's organization.

Mr. Gallagher: I object to all this your Honor. I do not think it is a matter that should be brought up here at all on question of what is a fair rate.

Examiner Pugh: You have probably gone about far enough along that line.

Mr. Prendergast: That is all.

Mr. Dynes: Now, just one or two questions you suggested to me. How long has this rate been in effect, I mean the rate to the plant of this complainant?

Mr. Prendergast: To Morton Grove it has been in effect for years.

Mr. Dynes: It is not a new rate, but an old established rate.

Mr. Prendergast: No sir, there has no change been made lately whatever.

Mr. Dynes: Are there any discriminatory features about that, or other points along the line enjoying any better or different rates?

Mr. Prendergast: Not on the C. M. & St. P.

Mr. Dynes: I mean on the lines of this defendant.

Mr. Prendergast: Yes, that is what I said.

Mr. Dynes: That is all.

147 Cross-examination:

Mr. Gallagher: Coal that is destined to Morton Grove and coal that is destined to Buena Park passes through Galewood and is transferred to your road at Galewood, is it not?

Mr. Prendergast: Ordinarily it is.

Mr. Gallagher: And then they both move through these congested tracks to Pacific Junction?

Mr. Prendergast: That is right.

Mr. Gallagher: Then one of them branches to the northwest and goes to Morton Grove, is that right?

Mr. Prendergast: That is right.

Mr. Gallagher: Then one branches over towards Goose Island in your Division Street yards?

Mr. Prendergast: That is right.

Mr. Gallagher: And then passes up to Buena Park?
Mr. Prendergast: That is true.
Mr. Gallagher: Take the coal going to Buena Park after it leaves Pacific Junction, it passes through the most congested part of your terminal does it not?
Mr. Prendergast: I would not admit that because that is a freight track. Bloomingdale road, there are no road trains on that track.
Mr. Gallagher: Don't you know that the most congested part of your terminal in Chicago is right over there at Goose Island?
Mr. Prendergast: So far as the coal dealers and heavy manufacturers are concerned, yes.
Mr. Gallagher: I am referring now to the transportation business of the St. Paul road.
148 Mr. Prendergast: I say it is so far as those yards are concerned as to coal going in, but not coming out.
Mr. Gallagher: And this coal goes through those yards and passes up to Buena Park?
Mr. Prendergast: It goes along to C. & E. Junction and then north on the C. & E. Junction, yes, sir.
Mr. Gallagher: The distance- to Morton Grove and to Buena Park are substantially the same, are they not?
Mr. Prendergast: Figuring from where, from Galewood?
Mr. Gallagher: From Galewood.
Mr. Prendergast: Buena Park is about three miles less haul with us.
Mr. Gallagher: Will you kindly tell the Commission why you charge twice as much to Morton Grove as you do to Buena Park?
Mr. Prendergast: Buena Park is in the switching limits, it is in the city.
Mr. Gallagher: The only way you justify that charge, is that you say it is inside of the switching limits?
Mr. Prendergast: Yes, sir.
Mr. Gallagher: Take the case of Edgewater, which is how far north of Buena Park?
Mr. Prendergast: It is a mile and an eighth.
Mr. Gallagher: That rate was 20 cents up to about two months ago, was it not?
Mr. Prendergast: That is right.
Mr. Gallagher: At that time you advanced that rate because the coal dealers at Rosehill on the Northwestern had filed a complaint with the Commission, alleging that their rate of 30 cents was discriminatory as against them because your road had a rate of
149 20 cents to Edgewater, and thereupon you advanced your rate to 30 cents, isn't that right?
Mr. Prendergast: I wouldn't say we did it after that complaint was filed.
Mr. Gallagher: But you did do it?
Mr. Prendergast: I didn't know anything about the complaint before I did it.
Mr. Gallagher: But you did do it after the complaint was filed?
Mr. Prendergast: I did not know anything about the complaint

at the time, but for another reason, that is to put our line on a parity with the other fellow.

Mr. Gallagher: Mr. Prendergast,——

Mr. Prendergast: I am under oath here.

Mr. Gallagher: Do you say here you did not know that those shippers at Rosehill had filed a complaint with the Interstate Commerce Commission.

Mr. Prendergast: I did not, because it was against the Northwestern road, and I would not be interested.

Mr. Gallagher: And do you go on record as saying that you did not advance that rate ten cents a ton at the suggestion of the Northwestern in order to equalize those charges?

Mr. Prendergast: I didn't say that.

Mr. Gallagher: Isn't that a fact?

Mr. Prendergast: That is the fact, the Northwestern took it up with us and we looked it over and figured it out that we ought to get as much as Rose Hill.

Mr. Gallagher: No, up to the time you did that at the suggestion of the Chicago & Northwestern, a competing carrier, your rate for many years had been 20 cents a ton?

150 Mr. Prendergast: Oh, I would say five or six years anyway.

Mr. Gallagher: You spoke of a certain congestion at Galewood in April of this year.

Mr. Prendergast: Yes.

Mr. Gallagher: In the deliveries of Poehlman's coal?

Mr. Prendergast: Yes, sir.

Mr. Gallagher: Is it not a fact that that congestion was due to the delays in transportation on the trunk lines?

Mr. Prendergast: Not according to our records. Our records showed that Morton Grove was full, could not put any more in, and as soon as we took one car out we sent another in.

Mr. Gallagher: Do you know the date of that?

Mr. Prendergast: No.

Mr. Gallagher: Is it not a fact that bunching was very common at that time with the trunk lines?

Mr. Prendergast: I will admit that.

Mr. Gallagher: In bringing coal into Chicago?

Mr. Prendergast: Yes.

Mr. Gallagher: So Poehlman might have been absolutely free from any connection with bunching?

Mr. Prendergast: I testified we got it in bunches.

Mr. Gallagher: You don't know how Poehlman buys his coal? He states to me now that he buys it under contract.

Mr. Prendergast: That is what he told me several months ago before he started this case.

Mr. Gallagher: He applied to you several times for a reduction in this rate did he not?

Mr. Prendergast: Yes, sir, he did.

Mr. Gallagher: Before he filed this complaint?

151 Mr. Prendergast: Yes sir, he did.

Mr. Gallagher: Is it not a fact that during this period you

sent out to Poehlman ten or twelve cars of coal that he had not bought?

Mr. Prendergast: I don't know anything about that.

Mr. Gallagher: And that he kicked on it. What did you do with it?

Mr. Poehlman: He unloaded ten cars before we found out it was St. Paul coal.

Mr. Prendergast: From what point? I don't understand your question.

Mr. Dynes: I don't understand what that has to do with this.

Mr. Gallagher: He is talking about congestion at Poehlman's yards.

Examiner Pugh: Talk to me, gentlemen. There are too many talking now.

Mr. Gallagher: After this coal leaves the Pacific Junction and moves up to Morton Grove it is passing through a part of your line where there is a very heavy freight business, is that your evidence?

Mr. Prendergast: That is true, yes sir.

Mr. Gallagher: Coke that goes to Milwaukee goes up that way, does it not?

Mr. Prendergast: Yes, sir.

Mr. Gallagher: And then passes on to Milwaukee, a distance of about how many miles beyond Morton Grove?

Mr. Prendergast: Milwaukee is 85 miles from Chicago.

Mr. Gallagher: The coal that goes to Milwaukee of course goes over the same road?

Mr. Prendergast: Yes sir.

152 Mr. Gallagher: On a rate of 60-cents a ton?

Mr. Prendergast: That is true.

Mr. Gallagher: What is your rate to Edgebrook on coal?

Mr. Prendergast: The same as Morton.

Mr. Gallagher: Have you the tariff on that?

Mr. Prendergast: I haven't the tariff with me, but it is the same as Morton.

Mr. Gallagher: There isn't much business there, is there?

Mr. Prendergast: No, not much.

Mr. Gallagher: Butler Brothers are located in a very congested part of your terminal, are they not?

Mr. Prendergast: That is true, yes.

Mr. Gallagher: What is the rate on brick from Galewood to Morton Grove, do you know that?

Mr. Prendergast: I don't know it.

Mr. Gallagher: How heavy does brick load in a car?

Mr. Prendergast: Brick will run from 15,000 to 20,000, 60,000 or 80,000 pounds usually.

Mr. Gallagher: 60,000 to 80,000 pounds?

Mr. Prendergast: Yes, sir.

Mr. Gallagher: You have certain coal mines on your road in Illinois, have you not?

Mr. Prendergast: Yes, there are a number of coal mines on our road in Illinois.

Mr. Gallagher: Now, isn't the reason why you keep this rate up

from Galewood to Morton Grove, that you are attempting to discourage Poehlman Brothers from buying coal that comes off other lines and are seeking to compel them to buy coal that comes in on your road?

Mr. Prendergast: No sir.

Mr. Gallagher: Isn't that your policy?

Mr. Prendergast: No sir, it is not my policy.

153 Mr. Gallagher: As to coal in the Chicago terminal?

Mr. Prendergast: No. sir. I might answer you and explain that I asked Mr. Poehlman to buy some coal where we could get the road haul because the rate would be cheaper than the rate he paid from the east, and he told me he could not use the Illinois coal because there was sulphur in it and it killed the plants.

Mr. Gallagher: Can you suggest any reason to the Commission why greenhouses located at Des Plaines a greater distance from the central market, should receive fuel on the basis of the Chicago rate; and that greenhouses located at Morton Grove should be paying 40 cents a ton for their fuel in addition to the Chicago rate?

Mr. Prendergast: Sure, the Northwestern road is foolish.

Mr. Gallagher: No other reason occurs to you?

Mr. Prendergast: No, that covers it all, when you figure the service.

Mr. Gallagher: That is all.

Examiner Pugh: Stand aside. Any other witnesses, Mr. Dynes.

Mr. Dynes: That is all.

Examiner Pugh: Anything further on behalf of the complainant?

Mr. Gallagher: I would like to have Mr. Prendergast clear up one point. You say you spot coal for Poehlman?

Mr. Prendergast: Yes.

Mr. Gallagher: You spot coal for all industries, do you not the same way?

Mr. Prendergast: I said we re-spotted coal for Poehlman.

Mr. Gallagher: You re-spot for everyone don't you?

154–166 Mr. Prendergast: No, not if we know it. He testified to that himself.

Mr. Gallagher: When do you respot coal?

Mr. Prendergast: He testified to that. He said he had to bring it up to his bins and he said he had to respot the manure to load it into pits, and I think I will look into that myself when I get back to the office.

Examiner Pugh: Is there anything else?

Mr. Gallagher: No.

Examiner Pugh: No further evidence being offered, the case is considered as closed so far as the taking of testimony is concerned.

* * * * * * *

167 *Authentication of Record.*

STATE OF ILLINOIS,
Supreme Court, ss:

I, Charles W. Vail, Clerk of said Court, Do Hereby Certify that the foregoing is a true, full and complete transcript of the record and

proceedings in the case of State Public Utilities Commission of Illinois, successors of Railroad and Warehouse Commission of Illinois ex rel. Poehlmann Brothers Company, Appellee, vs. Chicago, Milwaukee & St. Paul Railroad Company, Appellant, and also of the Opinion of the Court rendered therein, as the same now appears on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, this 1st day of June A. D. 1915.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHAS. W. VAIL,
Clerk Supreme Court.

168–185 Be it remembered, to-wit, that on the 15th day of May, A. D. 1915, there was duly filed by Chicago, Milwaukee & St. Paul Railroad Company, appellant in this Court and plaintiff in error in the said petition for writ of error herein mentioned, in the office of the Clerk of the Supreme Court of Illinois, a petition for writ of error with assignments of error from the Supreme Court of the United States to the Supreme Court of Illinois addressed to the Hon. James H. Cartwright, Chief Justice of the Supreme Court of Illinois, with the original order by the said Chief Justice upon the said petition allowing said writ of error, which documents are in words and figures as follows, to-wit:

186 In the Supreme Court of the United States, October Term, A. D. 1914.

No. 1032.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Plaintiff in Error,
vs.
STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS, Defendant in Error.

Error to Supreme Court of Illinois.

Now comes the plaintiff in error, Chicago, Milwaukee & St. Paul Railway Company, by Burton Hanson and O. W. Dynes, its counsel, and states that it intends to rely on the following errors:

Statement of Errors Relied Upon.

1. The judgment of the Supreme Court of Illinois is in violation of Paragraph 3 of Section 8 of Article 1 of the Constitution of the United States, and the court erred in entering said judgment.

2. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case places a burden upon in-

terstate commerce and discriminates against interstate commerce and in favor of state commerce, in violation of Paragraph 3 of Section 8 of Article I of the Constitution of the United States, and the Supreme Court of Illinois erred in refusing to set aside said order of the
187 Railroad and Warehouse Commission of Illinois and in entering a judgment sustaining said order.

3. The judgment of the Supreme Court of Illinois is in contravention of an Act entitled An Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof and is more particularly in contravention of Sections 1, 2, 3, 6, 13 and 15 thereof, as amended, and the Supreme Court erred in entering said judgment.

4. The order of the Railroad and Warehouse Commission of the State of Illinois, appealed from in this case, places a burden upon interstate commerce and discriminates against interstate commerce and in favor of state commerce, in contravention of an Act entitled An Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof, and is more particularly in contravention of Sections 1, 2, 3, 6, 13 and 15 thereof, as amended, and the Supreme Court of Illinois erred in refusing to set aside said order of the Railroad and Warehouse Commission of Illinois, and in entering a judgment sustaining said order.

5. The Supreme Court of Illinois erred in refusing to hold that under the third paragraph of Section 8 of Article I of the Constitution of the United States and under the Federal Act to Regulate Commerce, as amended, the Railroad and Warehouse Commission of the State of Illinois was without jurisdiction to enter an order so affecting a through rate as to reduce, solely for the benefit of Illinois shippers and producers of coal, the charges for a factor thereof
188 made by an interstate common carrier wherein the services performed by the common carrier are identical on interstate and intrastate shipments of coal.

6. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case has the effect of obliging interstate shippers of coal and producers of coal in other states than Illinois, to pay more for identically the same service of a common carrier than Illinois shippers and producers of coal pay therefor, and the Supreme Court of Illinois erred in entering a judgment affirming and giving effect to said order of said Railroad and Warehouse Commission.

7. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case is unreasonable and unlawful in that without finding the through rate excessive or discriminatory and without facts before it on which to make such finding, it reduces, solely for the benefit of Ilinois shippers and producers of coal, the charges for a factor of the service involved that is a common factor in interstate and Illinois movements of coal and which common factor the Interstate Commerce Commission had held, on the same record, was not shown to be subject to separate regulation, and the Supreme Court of Illinois erred in sustaining said order of said Railroad and Warehouse Commission.

8. The Supreme Court of the State of Illinois erred in sustaining the order of the Railroad and Warehouse Commission of the State of Illinois, holding, on the complaint of the petitioner, Poehlmann Brothers Company, that the charges for that factor of a
189 through rate which lies between Galewood, Illinois, and Morton Grove, Illinois, could be regulated and reduced without regard to the reasonableness of the through rate, when it appeared in the record before this court that the Interstate Commerce Commission had held, on the same evidence and in the case of the same petitioner, that that factor could not be regulated or reduced, independent of and without regard to the question of the reasonableness of the through rate as a whole.

9. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from in this case authorizes the use by the State of Illinois of an instrument of interstate commerce in a discriminatory manner so as to inflict injury on interstate commerce and so as to require an interstate carrier to do that which Congress, by the enactment of the Act to Regulate Commerce, has prohibited the interstate carrier doing, and the Supreme Court of Illinois erred in sustaining and affirming said order of said Railroad and Warehouse Commission.

10. The Interstate Commerce Commission having held, on the same evidence presented to the Railroad and Warehouse Commission of the State of Illinois in this case, that the Chicago, Milwaukee & St. Paul Railway Company was not obliged to reduce its charges for that part of the through service involved in both interstate and Illinois coal shipments unless and until the through rate was shown to be unreasonable or discriminatory, the order of the Railroad and
190 Warehouse Commission of the State of Illinois appealed from in this case, being in conflict with the opinion of the Interstate Commerce Commission, entered on the same state of facts, is void because of being in contravention of the Act to Regulate Commerce and the action of the Interstate Commerce Commission taken pursuant thereto, and the Supreme Court of Illinois erred in affirming and giving effect to said order of said Railroad and Warehouse Commission.

Parts of the Record Necessary to Print.

And counsel for plaintiff in error further state that the parts of the record which they think necessary for the consideration of the foregoing errors relied upon are the following, namely:

1. The letter of William Kilpatrick, Secretary of the Railroad & Warehouse Commission of Illinois, dated November 13, 1913, addressed to John H. Drennan, Clerk of the Circuit Court, Springfield, Illinois, submitting certified copy of the record of this case in the office of the Railroad & Warehouse Commission to the Circuit Court of Sangamon County, Illinois. The foregoing will be found on page 5 of the record filed in this court.

2. Petition for the fixing of through rates on intrastate shipments

of coal and manure to Morton Grove, Cook County, Illinois, on which this case was heard before the Railroad & Warehouse Commission of Illinois. Said petition will be found on pages 6, 7, 8, 9, 10, 11, 12 and 13 of the record filed in this court.

191 3. The separate answer of the Chicago, Milwaukee & St. Paul Railway Company to the aforementioned petition, which answer will be found on pages 14, 15 and 16 of the record filed in this court.

4. The answer of the Illinois Central Railroad Company to the aforementioned petition, which answer will be found on pages 19, 20, 21 and 22 of the record filed in this court.

5. The answer of The Belt Railway Company of Chicago to the aforementioned petition, which answer will be found on pages 29 and 30 of the record filed in this court.

6. The opinion of the Railroad & Warehouse Commission of Illinois and order of said Railroad & Warehouse Commission appealed from in this proceeding, which said opinion and order will be found on pages 31, 32, 33, 34, 35, and 36 of the record filed in this court.

7. The stipulation by the parties filed with the Circuit Court of Sangamon County that the cause be submitted to that court upon the evidence introduced by both parties during the hearing of the cause by the Railroad & Warehouse Commission of Illinois, which said stipulation will be found on page 41 of the record filed in this court.

8. The recital that the testimony taken and heard before the Railroad & Warehouse Commission was filed with the Clerk of the Sangamon County Circuit Court and that a copy of same appears in this record, which recital will be found on page 46 of the record filed in this court.

192 9. That part of the opening statement made by Mr. Gallagher before the Railroad & Warehouse Commission beginning at the top of page 48 and extending to and including the words: Mr. Dynes—That will be all right," on page 49 of the record filed in this court.

10. Also the further sentence from Mr. Gallagher's statement found on page 50 of the record filed in this court which reads as follows: "I want to ask Mr. Poehlmann a few questions and I am willing to stipulate that the case be submitted on this evidence."

11. Also all of page 51 of the record filed in this court and all of page 52 of the record filed in this court.

12. All of that portion of page 58 of the record filed in this court beginning with and following the lines: "Mr. Clardy—We understand our proportional rate is not involved. If it is we cannot agree."

13. All of pages 59, 60, 61, 62, 63, 64, 65 and the first three (3) words at the top of page 66, namely the words: "on the transcript."

14. Also the first paragraph at the top of page 69 of the record filed in this court and the line succeeding said first paragraph, which line reads as follows: "Chairman—I so understand it."

15. All of page 101 of the record filed in this court.

16. Page 103 of the record filed in this court, except the indexes.
17. All of pages 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124,
193 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153 and 154 of the record filed in this court.
18. All of pages 90 and 91 of the record filed in this court.
19. All of page 92 of the record filed in this court.
20. The first three (3) lines on page 93 of the record filed in this court and the first six (6) words on the fourth line, ending with the words "Supreme Court".
21. The last paragraph on page 94 of the record filed in this court.
22. All of page 96 of the record filed in this court.
23. All of page 97 of the record filed in this court.
24. All of pages 98, 99 and 100 of the record filed in this court.
25. All of page 106 of the record filed in this court.
26. All of page 167 of the record filed in this court.
27. All of page 168 of the record filed in this court.
28. The statement of errors relied upon as set forth on pages 1 to 5 hereof.

Respectfully submitted,

BURTON HANSON,
O. W. DYNES,
Counsel for Chicago, Milwaukee & St. Paul Railway Company, Plaintiff in Error.

194 STATE OF ILLINOIS,
County of Cook, ss:

Julius M. Lorenz being first duly sworn on oath deposes and says that he delivered copies of the foregoing document to Everett Jennings, Esq., and M. F. Gallagher, Esq., counsel for the State Public Utilities Commission of Illinois, Defendant in Error, this first day of September, A. D. 1915.

JULIUS M. LORENZ.

Subscribed and sworn to before me this first day of September, A. D. 1915.

[Seal W. D. Millard, Notary Public, Cook County, Ill.]

W. D. MILLARD,
Notary Public.

195 [Endorsed:] 495/24776. No. 1032. United States of America, in Supreme Court. Chicago, Milwaukee & St. Paul Railway Company, Plaintiff in Error, vs. State Public Utilities Commission of Illinois, Defendant in Error. Statement of errors relied upon and specification of parts of record to be printed. Burton Hanson, O. W. Dynes, Counsel for Plaintiff in Error.

196 File No. 24,776. Supreme Court U. S. October term, 1915. Term No. 495. Chicago, Milwaukee & St. Paul Rwy. Co., Plaintiff in Error, vs. State Public Utilities Comm. of Illinois. Statement of errors relied upon, and designation by plaintiff in error of parts or record to be printed. Filed September 3rd, 1915.

Endorsed on cover: File No. 24,776. Illinois Supreme Court. Term No. 495. Chicago, Milwaukee & St. Paul Railway Company, Plaintiff in Error, vs. The State Public Utilities Commission of Illinois. Filed June 12th, 1915. File No. 24,776.

FILE COPY.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. 495

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR FILED IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM OR TRANSFER TO SUMMARY DOCKET.

BURTON HANSON,
O. W. DYNES,
Attorneys for Plaintiff in Error.

BURTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. 495

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR FILED IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM OR TRANSFER TO SUMMARY DOCKET.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

The Illinois Commission, by the order complained of, reduced by 50 per cent. a factor of a through rate common to interstate and intrastate traffic on a record which was passed upon by the Interstate Commerce Commission and held insufficient to warrant any reduction in that factor.

The rate ordered reduced applies to that portion of the through hauls which lies between Chicago, Illinois, and

Morton Grove, Illinois, and for which the plaintiff in error makes a charge of forty cents per ton on carload shipments of coal which are moved as far as Chicago on proportional rates applicable from points of origin in Illinois, Indiana, Ohio and certain other States.

The Chicago, Milwaukee & St. Paul Railway Company has its eastern terminus at Chicago. It, therefore, does not reach the coal fields to the east and south of that terminus from which Chicago and its environs obtain coal. Morton Grove is a suburban town northwest of Chicago.

Quite a large number of railroads carry coal from southern points in Illinois and Indiana to Chicago. Also from points farther east, in Ohio, Pennsylvania and West Virginia. Those roads publish two kinds of rates, namely:

(a) A local rate, applicable from point of origin to destinations on their own rails in Chicago, and

(b) A proportional rate, applicable as a proportion of a through rate when the coal passes through Chicago to points beyond on the rails of a connecting carrier, such as the Chicago, Milwaukee & St. Paul Railway Company.

When the coal moves under the through rate to destinations beyond Chicago, the charge of the originating carrier is ten cents a ton less than its local rate to Chicago. This proportional rate, combined with the local rate of the Chicago, Milwaukee & St. Paul Railway Company as a connecting carrier, makes up the through rate from point of origin, via Chicago, to destinations beyond Chicago, such as Morton Grove, the destination involved in this proceeding. The earnings of the Milwaukee Road out of the through rate on such coal movements, are its full local rates, as published in its tariffs. Forty cents per ton is its local rate on carload shipments of coal from Chicago to Morton Grove. The earnings of the inbound carriers

	DISTANCE	RATE PER TON
Pana to Morton Grove	217 Miles	$1.22

vary with the distances from Chicago of the points of origin. For the shorter hauls, which are from Indiana points of origin and Illinois points of origin, their earnings are the lowest. From West Virginia mines to Chicago the rate is $2.05 per ton.

To further illustrate this rate structure in its simpler aspects we submit the diagram on the adjoining page. The distance from Pana, Illinois, to Morton Grove, Illinois, is 217 miles. The through rate on coal, $1.22. From Sullivan, Indiana, to Morton Grove, the distance is 216 miles and the through rate, $1.27. The effect of the Illinois Commission's order here involved, is to reduce the rate on coal between Pana, Illinois, and Morton Grove, Illinois, to $1.02, which is 25 cents a ton less than the current rate from the Indiana point equally distant. The portion of the route marked in red on the diagram is over the rails of the Milwaukee Road and is common to all movements of coal to Morton Grove, whether they originate in Illinois, Indiana, Ohio, Pennsylvania or West Virginia, and whether they originate on the lines of the Chicago & Eastern Illinois Road, shown on the diagram, or on the lines of any of the many other roads that haul coal to Chicago from points in the States named.

It is the portion of the route between Chicago and Morton Grove, shown in red, on which the Illinois Commission ordered the fifty per cent. reduction in rate and on which the Interstate Commerce Commission held that the rate is not shown to be unreasonable and may not properly be regulated apart from the through rate as a whole.

The question passed upon in the order appealed from in this case was decided by the Interstate Commerce Commission on a complaint brought against the Chicago, Milwaukee & St. Paul Railway Company by Poehl-

mann Bros. Company, the same complainant that brought the complaint before the Illinois Railroad & Warehouse Commission which resulted in the order that is here being reviewed.

At the time the Interstate Commerce Commission took jurisdiction of this question, that Commission had before it the same evidence and in fact the same record that was before the Illinois Commission when it subsequently heard the case and entered the order appealed from. How the two Commissions happened to pass upon the same record, is explained by the fact that the record made before the Interstate Commerce Commission, in so far as facts and evidence are concerned, was, by agreement and stipulation between the parties, made the record before the Railroad & Warehouse Commission of the State of Illinois at the hearing before that body. (Rec., 19.)

There were added to the record before the Illinois Railroad & Warehouse Commission a few questions and answers not contained in the record before the Interstate Commerce Commission (Rec., 15 to 18), but those questions and answers in no way changed or modified any fact here involved and are in no part material to the issues before this court. The Interstate Commerce Commission held that the evidence was not sufficient to warrant a reduction in the rate that was reduced by the Illinois Commission acting on the same record. The Interstate Commerce Commission's decision is reported in *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89.

The Interstate Commerce Commission, in taking jurisdiction of the question involving the rate subsequently regulated by the Illinois Commission, found the rates from points of origin to destination, as published in the

carriers' tariff, to be "through rates," and held that the factor of the *through rates* which the Illinois Commission regulated, could not be regulated independent of or apart from a regulation of the through rate *as a whole.* Id., 92.

The tariffs on which the State Commission passed were constructed the same as those on which the Interstate Commerce Commission passed, and a through intrastate rate, from point of origin to destination, was involved in the same way as the one which the Interstate Commerce Commission held should be regulated as a whole and not by the regulation of a single factor thereof. (Rec., 2, 3, 11, 13, 14.)

Poehlmann Bros. Company is to be allowed reparation to the extent of 20 cents per ton on coal from Illinois points of origin if the order of the Illinois Commission is sustained, and Poehlmann Bros. Company is now buying substantially all of its coal in Illinois. (Rec., 15.) Prior to the time the Interstate Commerce Commission dismissed the complaint against the factor of the through rates, which the Illinois Commission reduced, Poehlmann Bros. Company received two-thirds of its coal over interstate routes from points east of Illinois. (Rec., 25.)

BRIEF OF ARGUMENT IN OPPOSITION TO MOTIONS TO DISMISS WRIT AND TO AFFIRM JUDGMENT.

The order of the Railroad and Warehouse Commission of the State of Illinois, the validity of which this court is asked to pass upon, is unlawful in the following particulars:

(a) The order is unlawful in that it is a regulation by the Illinois Commission of a factor of a through rate which is common to interstate and intrastate traffic contrary to and in conflict with its regulation by the Interstate Commerce Commission on the same state of facts and on the same record.

(b) The order is unlawful in that it expresses assumed jurisdiction by the Illinois Commission of a rate question over which the Interstate Commerce Commission had assumed jurisdiction under the Act to Regulate Commerce.

(c) The order is unlawful in that it requires the plaintiff in error, as a common carrier, to discriminate against localities outside the State of Illinois and grant unlawful preferences to localities within the State of Illinois.

(d) The order would interfere with and place a burden upon interstate commerce, and the agencies of interstate commerce, since in passing on precisely the same service that the Interstate Commerce Commission passed upon, and considering the same state of facts on the same record, the Illinois Commission denies the plaintiff in error the right to make a charge for service common to interstate and intrastate traffic which the Interstate Commerce Commission held was not shown by that record to be unreasonable or discriminatory.

(e) The order requires plaintiff in error to perform service for intrastate coal shippers at one-half what the Interstate Commerce Commission has held

on the same record is not shown to be an unreasonable rate to charge for the identical service rendered on interstate coal shipments.

(f) The order would have the effect of regulating interstate traffic through coercing plaintiff in error to change a factor of an interstate rate (which the Interstate Commerce Commission has held not to have been shown unreasonable or discriminatory) to avoid the discrimination resulting from the order.

(g) The order would result in unlawful discrimination against interstate shippers of coal and would result in extending unlawful preferences to their competitors who ship intrastate to the same destination on the railroad of plaintiff in error.

(h) The order would result in unlawful discrimination against interstate commerce and in granting unlawful preferment to state commerce.

(i) The burden of proof rested upon the complainant before the Illinois Commission and the laws applicable indulged complainant in no presumptions that would supply the place of the necessary evidence which the Interstate Commerce Commission found wanting in this record.

(j) The order of the Illinois Commission is not a regulation of the through rate, but is the fixing of divisions as between the carriers participating in the through rate, where the carriers had not failed to agree on divisions, had not asked the Commission to fix divisions, and where the Commission had no statutory power to fix divisions as between carriers.

(k) This case is distinguishable from the Minnesota Rate Case for the reason, among others, that in the case at bar the Interstate Commerce Commission had taken jurisdiction of, and heard evidence on, and adopted a policy in regard to, the compensation of the carrier for the identical service on which the State Commission directed a reduction in the carrier's earnings in an order that is in conflict with the action of the Interstate Commerce Commission. In the Minnesota Rate Case the Interstate Commerce Commission had not taken action or entered an order

in respect of the compensation involved or in respect of the record on which the state rate was fixed. There was not conflict between the Federal authority and the State authority arising from an identical state of facts in the Minnesota Case.

If the foregoing propositions are supported by the record before this court, as we contend they are, this is not a cause to be summarily dismissed as one over which this court has no jurisdiction nor should the judgment be peremptorily affirmed as in cases where the writ is frivolous and brought only for delay.

BRIEF OF LAW POINTS AND AUTHORITIES.

I.

The Federal Government had taken jurisdiction of the rate and railroad service here involved on October 26, 1912, which was prior to the attempted regulation by the Illinois Commission, on October 25, 1913, that resulted in the order complained of.

Poehlmann Bros. Co. v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89.

II.

"There is no room in our scheme of Government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations."

Minnesota Rate Cases, 230 U. S., 352, 399.

See also:

Mondou v. *N. Y. N. H. & H. R. R. Co.*, 223 U. S., 1, 47, 54, 55.

III.

"In matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting State regulation."

Minnesota Rate Cases, 230 U. S., 352, 399, 400.

See also:

So. Ry. Co. v. *Reid,* 222 U. S., 424, 436.
Northern Pac. Ry. Co. v. *Washington,* 222 U. S., 370, 378.
Gulf, Colorado & Santa Fe Ry. Co. v. *Hefley,* 158 U. S., 98, 103, 104.
Bowman v. *C. & N. W. Ry. Co.,* 125 U. S., 465, 481, 485.
Gloucester Ferry Co. v. *Pennsylvania,* 114 U. S., 196, 204.
County of Mobile v. *Kimball,* 102 U. S., 691, 697.
Welton v. *Missouri,* 91 U. S., 275, 280.
Ex parte McNiel, 13 Wall., 236, 240.
Cooley v. *Board of Wardens,* 12 How., 299, 319.

IV.

A State exceeds its lawful authority when it attempts to regulate rates applicable on interstate commerce or to subject the operation of carriers in the course of such transportation to requirements that are unreasonable or pass beyond the bounds of suitable local protection.

Minnesota Rate Cases, 230 U. S., 352, 401.

See also:

Yazoo & Miss. Valley R. Co. v. *Greenwood Grocery Co.,* 227 U. S., 1.
Texas & N. O. R. R. v. *Sabine Tram Co.,* 227 U. S., 111.
R. R. Commission of Ohio v. *Worthington,* 225 U. S., 101.
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St. Louis S. W. Ry. Co. v. *Arkansas,* 217 U. S., 136.

Houston & T. C. R. R. Co. v. *Mayes*, 210 U. S., 321.
Atlantic Coast Line v. *Wharton*, 207 U. S., 328.
Miss. R. R. Commission v. *I. C. R. R. Co.*, 203 U. S., 335.
McNeill v. *So. Ry. Co.*, 202 U. S., 543.
Hanley v. *K. C. So. Ry. Co.*, 187 U. S., 617.
Louisville & Nashville R. R. Co. v. *Eubank*, 184 U. S., 27.
C. C. C. & St. L. Ry. Co. v. *Illinois*, 177 U. S., 514.
Covington Bridge Co. v. *Kentucky*, 154 U. S., 204.
Wabash Ry. Co. v. *Illinois*, 118 U. S., 557, 577.
Hall v. *Decuir*, 95 U. S., 485, 488.

V.

The Interstate Commerce Commission is clothed with power, granted by Congress through the Act to Regulate Commerce, passed under authority of the Commerce Clause of the Constitution, which power is adequate to meet the varying exigencies that arise and to protect the national interests by securing the freedom of interstate commercial intercourse from local control.

Houston East & West Texas Ry. Co. v. *U. S.* and *Texas & Pacific Ry. Co.* v. *U. S.* (Shreveport Case), 234 U. S., 342, 350, 351.

See also:

Minnesota Rate Cases, 230 U. S., 352, 398, 399.
Second Employers' Liability Cases, 223 U. S., 1, 47, 53, 54.
Smith v. *Alabama*, 124 U. S., 465, 473.

County of Mobile v. *Kimball*, 102 U. S., 691, 696, 697.

Brown v. *Maryland*, 12 Wheat., 419, 446.

Gibbons v. *Ogden*, 9 Wheat., 1, 196, 224.

VI.

The authority of Congress, exercised through the Interstate Commerce Commission, extends to interstate common carriers as instruments of interstate commerce in such way as necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance.

Texas & Pacific Ry. Co. v. *U. S.*, 234 U. S., 342, 351.

VII.

"The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 354.

See also:

L. & N. R. R. v. *Eubank*, 184 U. S., 27.

VIII.

"That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a State may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 354.

IX.

"It is also clear that, in removing the injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 355.

X.

"Wherever the interstate and intrastate transactions of carriers are so related that the Government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 351, 352.

See also:

Illinois Central R. R. Co. v. *Behrens*, 233 U. S., 473.

Interstate Commerce Commission v. *Goodrich Transit Company*, 224 U. S., 194, 205, 213.

Second Employers' Liability Cases, 223 U. S., 1, 48, 51.

Southern Railway Co. v. *U. S.*, 222 U. S., 20, 26, 27.

B. & O. R. R. Co. v. *Interstate Commerce Commission*, 221 U. S., 612, 618.

XI.

"The fact that carriers are instruments of intrastate commerce as well as of interstate commerce does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to the Federal care."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 351.

XII.

This court has several times recognized in its opinions that the work of solving the details and intricacies of rate regulation has been delegated by Congress to the Interstate Commerce Commission, and this court has held that acting within that field the Interstate Commerce Commission is supreme and its acts are not reviewable here except where the Commission exceeds its authority or otherwise fails to conform to the requirements or the limitations of the Act to Regulate Commerce.

Interstate Commerce Commission v. *I. C. R. R. Co.*, 215 U. S., 452.

B. & O. R. R. Co. v. *Pitcairn Coal Co.*, 215 U. S., 481.

Southern Pacific Co. v. *I. C. C.*, 219 U. S., 433.

XIII.

The Interstate Commerce Commission, having examined this record and found the facts insufficient to warrant a reduction of the rate for the service here involved, the Illinois Commission may not, under the law, deduce a different conclusion from the same facts and enter a regulative order founded on what the Interstate Commerce Commission has declared to be insufficient evidence to support such order.

Interstate Commerce Commission v. *L. & N. R. R. Co.*, 227 U. S., 88, 91.

XIV.

Plaintiff in error exhausted its means of remedy in the State tribunals without gaining relief.

C. M. & St. P. Ry. Co. v. *Public Utilities Commission*, 268 Ill., 49.

ARGUMENT.

I.

REASONS WHY THE WRIT OF ERROR SHOULD NOT BE DISMISSED ON MOTION OF DEFENDANT IN ERROR FOR ALLEGED LACK OF JURISDICTION.

The undisputed facts establish that the Chicago, Milwaukee & St. Paul Railway Company, plaintiff in error, is a common carrier subject to the Act to Regulate Commerce; that as such common carrier the reasonableness of its rates and charges, for service in the transportation of coal, in carloads, delivered by it at Morton Grove and received by it from connecting carriers in Chicago, was passed upon by the Interstate Commerce Commission on the same record, so far as evidence and admissions are concerned, that is involved in this proceeding; that the Interstate Commerce Commission held on this record:

(1) That the evidence was of such an unsatisfactory character and so insufficient that the complaint was not sustained.

(2) That the rates from Chicago to northern suburban points, such as the one here involved, are a part of a complex rate situation that cannot be properly adjusted as a portion of a through rate without the adjustment of the through rate as a whole.

(3) That the rate here in question is a part of a through rate and as such must be regulated as a through rate and not independently of the through rate.

(4) That the complaint must be dismissed, both for lack of sufficient evidence to warrant the reduction prayed for and because it seeks to have regulated one factor of a through rate only.

The opinion of the Interstate Commerce Commission is reported in *Poehlmann Bros. Company* v. *C. M. & St.*

P. Ry. Co., 30 I. C. C., 89. The following language is quoted from page 92:

"While, as stated, only the delivering line is made a party defendant, the comparisons made by complainant are nearly all with respect to through rates, or factors of through rates, from points of origin to destinations within, or just beyond, the Chicago switching district. The adjustment of rates within this general district is an exceedingly complex one. Ordinary prudence dictates that we should not prescribe a change in this adjustment, or require a reduction in any specific rate therein, except after careful examination of all the facts, both with respect to the rate itself and also its relation to the general adjustment.

Upon the record it clearly appears that complainant is not discriminated against by defendant.

The traffic in question is through traffic. The rate specifically attacked, although a separately established rate of the delivering line, cannot be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Some regard must be had to the measure of the through rate as an entirety, and neither the through rate nor the carriers responsible for it and participating in it are before us in this proceeding.

Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rate under attack, we must refrain from expressing any conclusion upon the reasonableness of either rate. The complaint must be dismissed, and it will be so ordered."

This court has several times recognized in its opinions that the work of solving the details and intricacies of rate regulation has been delegated by Congress to the Interstate Commerce Commission, and this court has held that acting within that field the Interstate Commerce Commission is supreme and its acts are not reviewable here except where the Commission exceeds its authority

or otherwise fails to conform to the requirements or the limitations of the Act to Regulate Commerce.

Interstate Commerce Commission v. *I. C. R. R. Co.*, 215 U. S., 452.

B. & O. R. R. Co. v. *Pitcairn Coal Co.*, 215 U. S., 481.

Southern Pacific Co. v. *I. C. C.*, 219 U. S., 433.

The Interstate Commerce Commission, in the exercise of its sound judgment and discretion within the field where it is supreme, declared that there was insufficient evidence in the present record to warrant a reduction or other regulation of the rate which the State Commission reduced. When the Interstate Commerce Commission found the evidence was insufficient to warrant a reduction in the rate, it was powerless, under the Act, to reduce it.

This court said, in *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S., 88, 91:

> "The statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. * * * It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

The Interstate Commerce Commission, in passing upon the facts in this case, was governed by the law outlined in the foregoing quotation. It declined to disregard all rules of evidence and capriciously make findings by administrative fiat. Under such circumstances, we are apparently forced to the conclusion that the Illinois Com-

mission's order is merely administrative fiat. To reason otherwise is to argue that the Interstate Commerce Commission's judgment is wrong within the peculiar province where its judgment is conclusive.

Clearly a conflict between Federal authority and State authority, or assumed State authority, is presented. That this court has jurisdiction to determine whether an order of a State Regulating Body invades the province of the Interstate Commerce Commission, contrary to the Commerce Clause of the Federal Constitution and the laws passed thereunder, is not a subject that requires argument.

II.

REASONS WHY THE JUDGMENT SHOULD NOT BE AFFIRMED ON THE THEORY THAT THE WRIT IS FRIVOLOUS, WITHOUT MERIT, AND MERELY BROUGHT FOR DELAY.

We present to this court a question of unusual gravity and importance that has arisen under the Act to Regulate Commerce as amended. The question is somewhat analogous to the central questions involved in the *Minnesota Rate Case*, 230 U. S., 352, and in the so-called Shreveport Case, *T. & P. Ry. Co.* v. *U. S.*, 234 U. S., 342.

This court is asked to say whether the general principle of law declared in the Shreveport Case should control in cases involving facts and conditions such as are presented by this record.

The amendment to the Act to Regulate Commerce, under which the central question here presented has arisen, is relatively new. Sufficient time has not elapsed since its adoption to bring before this court many of the academic questions of broad and general application that must, in the course of time, be finally dealt with here.

This court has not yet declared whether a common carrier, subject to the Act to Regulate Commerce, must submit to having its rates and earnings reduced by State authority for a service applicable alike to interstate and intrastate transportation when the Interstate Commerce Commission has already passed on the same state of facts in the same record and held the facts insufficient to support an order reducing the rates.

This court has not yet said whether, under the conditions referred to in the preceding paragraph, the carrier can be forced by the action of a State Commission to reduce its charges for interstate carriage that the Interstate Commerce Commission has held not to have been shown unreasonable or be forced to the alternative of charging 100 per cent. more to the interstate shipper than the State Commission allows it to charge the intrastate shipper for that part of the service that is common to both.

This court has not yet said that the action of the Interstate Commerce Commission must be regarded as conclusive and preclude contrary action by a State Commission when the former holds that a through rate, one factor of which is common to interstate as well as intrastate traffic, must be regulated as a whole instead of merely by regulating the one factor thereof which is common to interstate and intrastate traffic.

These are all questions entailing the construction of the Federal Act to Regulate Commerce that can only be finally determined by this court, which of itself should be sufficient answer to defendant in error's motion for a dismissal on the alleged ground that the writ is devoid of merit and brought only for delay.

Aside from the foregoing generic reasons why this cause should have the benefit of the full consideration and

deliberate judgment of this court, rather than a peremptory dismissal, we urge the following specific reasons:

The complainant has proved that to give effect to the Illinois Commission's order is to burden interstate commerce, to discriminate against localities and shippers in other States, to give undue preference to localities and shippers in Illinois and to deprive the interstate carrier of interstate commerce that it has enjoyed and will continue to enjoy if the ruling of the Interstate Commerce Commission stands as controlling and conclusive and unimpaired by the conflicting ruling of the State Commission.

At the hearing before the Interstate Commerce Commission, June 14th, 1912, Mr. Poehlmann testified that Poehlmann Bros. Company consumed approximately 30,000 tons of coal a year at its Morton Grove Plant and that two-thirds of that quantity of coal came from points of origin outside the State of Illinois. (Rec., 24, 25.) The same witness, testifying before the Illinois Commission in 1914, testified as follows:

"Q. About how many tons of coal a year do you consume in your business?

A. Approximately 30,000.

Q. What portion of your coal comes from mines in the State of Illinois?

A. At the present time almost all of it." (Rec., 15.)

It is obvious that Mr. Poehlmann was figuring on reparation benefits derivable from a decision by the Illinois Commission that would place a rate penalty on interstate coal and allow reparation on intrastate coal where the interstate basis in effect was charged for the portion of the haul which was common to interstate and intrastate service—the portion shown in red on the diagram opposite page 3, *supra*.

The rate which the plaintiff in error may charge for

hauling carload shipments of coal from Chicago to Morton Grove is forty cents per ton when the coal comes from Indiana or points east and southeast of Illinois. Under the Illinois Commission's order the plaintiff in error can charge only twenty cents per ton for identically the same service. Formerly 20,000 of the 30,000 tons consumed by Poehlmann Bros. Company came from interstate points of origin each year. Plaintiff in error earned $8,000 for its service in transporting over its portion of the haul that quantity of coal. The same coal is now being transported from points of origin in Illinois, and while plaintiff in error at present is collecting forty cents per ton on these Illinois shipments, it can only retain one-half of that amount, or twenty cents per ton, if the order of the Illinois Commission is held valid. The other twenty cents per ton, or $4,000 per year, must be paid back to Poehlmann Bros. Company if the order of the Illinois Commission is sustained in this court.

Referring again to the illustrative diagram opposite page 3, *supra*, the coal mine at Sullivan, Indiana, could no longer compete with the coal mine at Pana, Illinois, in supplying coal consumption at Morton Grove, for while the points are virtually equi-distant from Morton Grove, and while their rates would be nearly the same as far as Chicago, under the Illinois Commission's regulation the carrier is left to charge 100 per cent. more from Chicago to Morton Grove on the Indiana coal than on the Illinois coal. The only escape from this is for the interstate carrier to bow to the authority of the State Commission and reduce its interstate rate to conform to the rate prescribed by the State Commission for identically the same service on intrastate shipments. This would, of course, be in reality the regulation of interstate rates and charges by a State Commission.

III.

AS TO THE MOTION TO TRANSFER THIS CAUSE FOR HEARING ON THE SUMMARY DOCKET.

We are opposed to this motion only because we feel the importance of this case is such that it should not be summarily dealt with. Its importance to the plaintiff in error is not confined to merely the loss of $4,000 a year throughout the future in consequence of the application of a twenty-cent rate in lieu of a forty-cent rate on 20,000 tons of coal annually, for if Morton Grove is entitled to a reduction of 50 per cent., so are the stations north and south of it on the plaintiff in error's railroad. Also, the City of Evanston and towns on that branch would be entitled to corresponding reductions. The same would be true of cities located between Chicago and Elgin, Illinois, on that line of this carrier's road and interstate commerce would have to suffer the unfair competition discussed in preceding pages, the only alternative being that this carrier might allow the State Regulating Body to control its interstate rates by voluntarily reducing them to conform with the rates fixed by the State.

Apart from the immediate interests of the plaintiff in error, outlined above, there is still the broader interest of interstate shippers of coal to be considered, for if they may be made the victims of discriminatory rates regulated by the State to an extent such that they are excluded from the Chicago market, purchasers of coal will, doubtless, change their patronage from mines in Indiana and other States east and south of Illinois to the Illinois mines as the record shows Poehlmann Bros. Company has done.

It should be borne in mind also that if the Illinois Com-

mission may regulate the rates of the Chicago, Milwaukee & St. Paul Railway Company, as a delivering carrier participating in the through movement of coal to points in Illinois north and west of Chicago, it necessarily follows that it may similarly regulate the rates of all other delivering carriers participating in through rates on coal delivered at points in Illinois on their rails north and west of Chicago. If a State Commission may interfere at Chicago with the rate adjustment in a way to discriminate against or control interstate rates, it follows that State Commissions may take similar action at various points and in various States.

For all of these reasons we submit that this case is of sufficient importance to be considered on the regular docket in the regular course and that it is altogether too important to be summarily disposed of in accordance with the pending motion of defendant in error.

IV.

THE SUFFICIENCY OF EVIDENCE AND SPECIFICATIONS OF ERRORS.

On page seven of opposing counsel's brief they say:

> "The question of the sufficiency of the evidence on which to base the order is not here for review. That question is not embraced in the specifications of errors, and is no longer open."

We dispute the correctness of the language quoted. The question we raise in this connection is embraced in the seventh, eighth and tenth specifications of errors. (Rec., 50, 51.)

The seventh specification of error relied upon is as follows:

> "7. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from

in this case is unreasonable and unlawful in that without finding the through rate excessive or discriminatory and *without facts before it on which to make such finding,* it reduces, solely for the benefit of Illinois shippers and producers of coal, the charges for a factor of the service involved that is a common factor in interstate and Illinois movements of coal and which common factor the Interstate Commerce Commission had held, on the same record, was not shown to be subject to separate regulation, and the Supreme Court of Illinois erred in sustaining said order of said Railroad and Warehouse Commission."

The eighth and tenth specifications of errors present our contention that the Interstate Commerce Commission, having expressly found the evidence insufficient to warrant a reduction or regulation of a rate common to state and interstate traffic alike, it is beyond the power of the State Commission to overrule or nullify the conclusions of the Interstate Commerce Commission and regulate such a rate in its intrastate application and in a way that burdens or discriminates against interstate commerce.

The specifications of errors, above referred to, are pertinent to our contention that Congress, having declared through the Interstate Commerce Commission in what way and to what extent a given rate may or may not be regulated, the Illinois Commission, in dealing with the same rate in so far as both interstate and intrastate commerce may be affected by its action, must follow within the lines laid down by Federal authority. This court has so held in the following language:

"The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by

Federal authority." (*Houston & Texas Ry. Co. v. U. S.*, 234 U. S., 342, 354.)

We ask that each of defendant in error's three pending motions be denied.

Respectfully submitted,

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O. W. DYNES,
Attorneys for Plaintiff in Error.

FILE COPY.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. [redacted] 148

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

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GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. 495

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

On complaint of Poehlmann Bros. Company the Illinois Railroad and Warehouse Commission, through the

order complained of, reduced by 50 per cent. a factor of a through rate common to interstate and intrastate traffic on a record which was passed upon by the Interstate Commerce Commission and held insufficient to warrant any reduction in that factor. On appeal the Supreme Court of Illinois sustained and affirmed the order of the Illinois Commission. The case is brought to this court on writ of error.

The order appealed from relates to transportation charges on coal and on manure consumed in connection with the production of flowers at the plant of Poehlmann Bros. Company, Morton Grove, Illinois. The portion of the order relating to charges on manure does not involve interstate traffic and is not before this court. Several carriers were joined with plaintiff in error as defendants in the proceeding before the Railroad and Warehouse Commission (Trans., 2; Rec., 6), but the order was entered against the plaintiff in error alone. (Trans., 12; Rec., 35.) Since the order was entered the Railroad and Warehouse Commission of the State of Illinois has been superseded by the State Public Utilities Commission of Illinois. (Trans., 20; Rec., 92.)

The rate ordered reduced applies to that portion of through hauls which lies between Chicago, Illinois, and Morton Grove, Illinois, for which transportation the plaintiff in error makes a charge of forty cents per ton on carload shipments of coal which are moved as far as Chicago on proportional rates applicable from points of origin in Illinois, Indiana, Ohio and certain other States.

The Chicago, Milwaukee & St. Paul Railway Company has its eastern terminus at Chicago. It, therefore, does not reach the coal fields to the east and south of that

terminus from which Chicago and its environs obtain coal. Morton Grove is a suburban town northwest of Chicago, where Poehlmann Bros. Company operates extensive greenhouses that are heated by coal.

Quite a large number of railroads carry coal from southern points in Illinois and Indiana to Chicago. Also from points farther east, in Ohio, Pennsylvania and West Virginia. Those roads publish two kinds of rates, namely:

(a) A local rate, applicable from point of origin to destinations on their own rails in Chicago, and

(b) A proportional rate, applicable as a proportion of a through rate when the coal passes through Chicago to points beyond on the rails of a connecting carrier, such as the Chicago, Milwaukee & St. Paul Railway Company.

When the coal moves under the through rate to destinations beyond Chicago, the charge of the originating carrier is ten cents a ton less than its local rate to Chicago. This proportional rate, combined with the local rate of the Chicago, Milwaukee & St. Paul Railway Company as a connecting carrier, makes up the through rate from point of origin, via Chicago, to destinations beyond Chicago, such as Morton Grove, (Trans., 2; Rec., 8) the destination involved in this proceeding. The earnings of the Milwaukee Road out of the through rate on such coal movements are its full local rates, as published in its tariffs. Forty cents per ton is its local rate on carload shipments of coal from Chicago to Morton Grove. (Trans., 13; Rec., 48.) The earnings of the inbound carriers vary with the distances from Chicago of the points of origin. For the shorter hauls, which are from Indiana points of origin and Illinois points of origin, their earnings are the lowest.

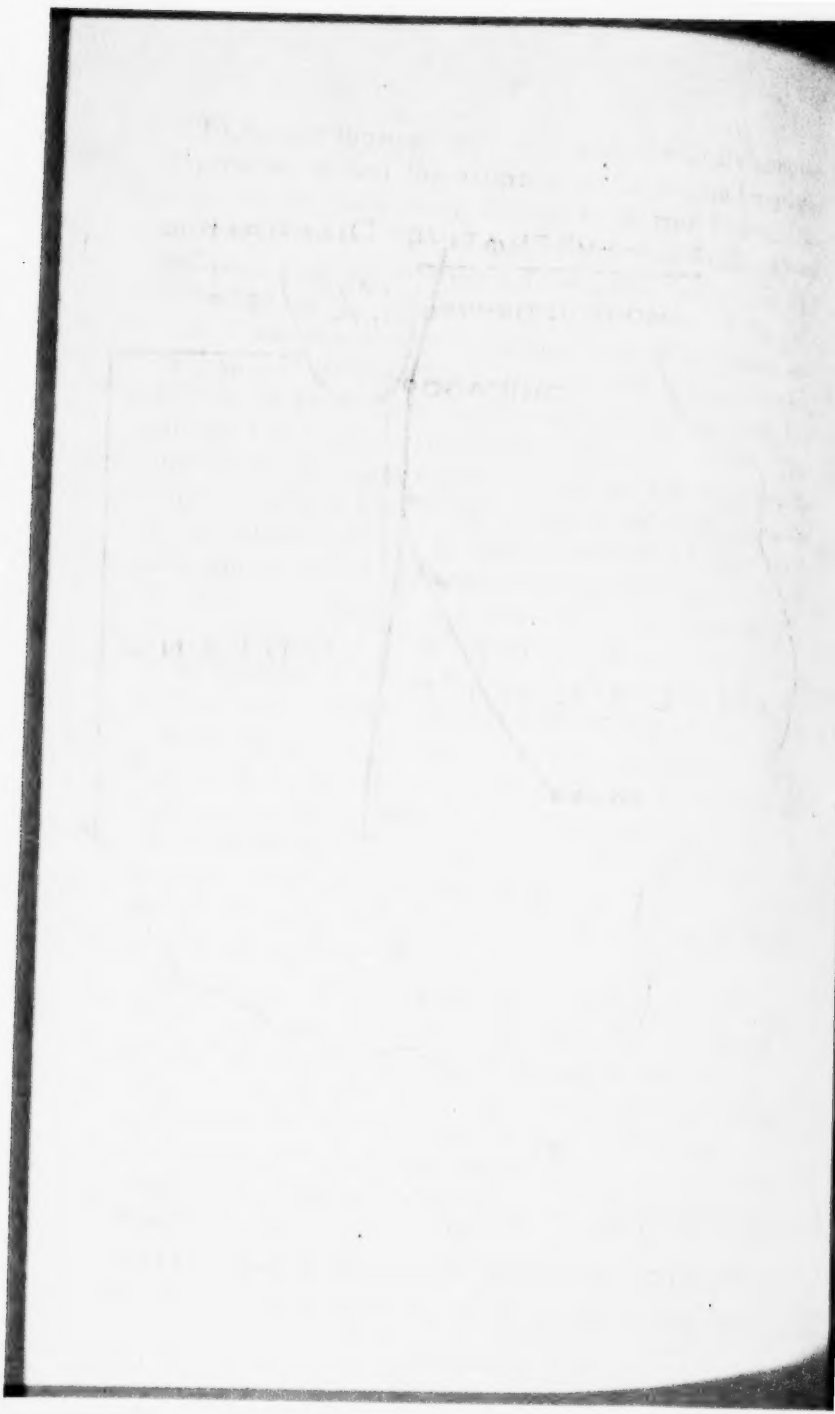
To further illustrate this rate structure in its simpler aspects we submit the diagram on the adjoining page. The distance from Pana, Illinois, to Morton Grove, Illinois, is 217 miles. The through rate on coal, $1.22. From Sullivan, Indiana, to Morton Grove, the distance is 216 miles and the through rate, $1.27. The effect of the Illinois Commission's order here involved, is to reduce the rate on coal between Pana, Illinois, and Morton Grove, Illinois, to $1.02, which is 25 cents a ton less than the current rate from the Indiana point equally distant. The portion of the route marked in red on the diagram is over the rails of the Milwaukee Road and is common to all movements of coal to Morton Grove, whether they originate in Illinois, Indiana, Ohio, Pennsylvania or West Virginia, and whether they originate on the lines of the Chicago & Eastern Illinois Road, shown on the diagram, or on the lines of any of the many other roads that haul coal to Chicago from points in the States named.

It is the portion of the route between Chicago and Morton Grove, shown in red, on which the Illinois Commission ordered the fifty per cent. reduction in rate and on which the Interstate Commerce Commission held, on the same record, that the rate is not shown to be unreasonable and may not properly be regulated apart from the through rate as a whole.

The question passed upon in the order appealed from in this case was decided by the Interstate Commerce Commission on a complaint brought against the Chicago, Milwaukee & St. Paul Railway Company by Poehlmann Bros. Company, the same complainant that brought the complaint before the Illinois Railroad & Warehouse Commission which resulted in the order that is here being reviewed.

At the time the Interstate Commerce Commission took jurisdiction of this question, that Commission had before

	DISTANCE	RATE PER TON
Pana to Morton Grove	217 Miles	$1.22
Sullivan to Morton Grove	216 Miles	$1.27



it the same evidence and in fact the same record that was before the Illinois Commission when it subsequently heard the case and entered the order appealed from. How the two Commissions happened to pass upon the same record is explained by the fact that the record made before the Interstate Commerce Commission, in so far as facts and evidence are concerned, was, by agreement and stipulation between the parties, made the record before the Railroad & Warehouse Commission of the State of Illinois at the hearing before that body. (Trans., 19; Rec., 69-89.)

There were added to the record before the Illinois Railroad & Warehouse Commission a few questions and answers not contained in the record before the Interstate Commerce Commission (Trans., 14 to 19; Rec., 49-68), but those questions and answers in no way changed or modified any fact here involved and are in no part material to the issues before this court. The Interstate Commerce Commission held that the evidence was not sufficient to warrant a reduction in the rate that was reduced by the Illinois Commission acting on the same record. The Interstate Commerce Commission's decision is reported in *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89.

The Interstate Commerce Commission, in taking jurisdiction of the question involving the rate subsequently regulated by the Illinois Commission, found the rates from points of origin to destination, as published in the carriers' tariffs, to be "through rates," and held that the factor of the *through rates* which the Illinois Commission regulated, could not be regulated independent of or apart from a regulation of the through rate *as a whole*. Id., 92.

The tariffs on which the State Commission passed were constructed the same as those on which the Inter-

state Commerce Commission passed, and a through intrastate rate, from point of origin to destination, was involved in the same way as the through interstate rate which the Interstate Commerce Commission held should be regulated as a whole and not by the regulation of a single factor thereof. (Trans., 2, 3, 11, 13, 14; Rec., 6-10, 32-34, 45-57.)

The Illinois Commission specifically found, as did the Interstate Commerce Commission, that the record contained no evidence attacking the through rate as a whole, (Trans., 11; Rec., 33) and specifically held that the evidence did not justify it in entering upon a regulation of the through rate. (Trans., 11; Rec., 34.)

Poehlmann Bros. Company by the order appealed from is to be allowed reparation to the extent of 20 cents per ton on coal from Illinois points of origin if the order of the Illinois Commission is sustained, and Poehlmann Bros. Company is now buying substantially all of its coal in Illinois. (Trans., 15; Rec., 59.) Prior to the time the Interstate Commerce Commission dismissed the complaint against the factor of the through rates, which the Illinois Commission reduced, Poehlmann Bros. Company received two-thirds of its coal over interstate routes from points east of Illinois. (Trans., 25; Rec., 105.)

SPECIFICATION OF ERRORS RELIED UPON

(1) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from is in violation of paragraph three of Section 8 of Article I. of the Constitution of the United States in that said order regulates, or assumes to regulate, a feature of commerce in which interstate commerce and intrastate commerce are commingled and said order was entered after federal jurisdiction of said feature of commerce had been taken by the Interstate Commerce Commission and said order of the Railroad and Warehouse Commission of Illinois regulates, or attempts to regulate, said feature of commerce differently from and inconsistently with its regulation by the Interstate Commerce Commission, thus constituting a burden upon and an interference with interstate commerce. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(2) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from is in violation of paragraph three of Section 8 of Article I. of the Constitution of the United States in that said order requires plaintiff in error to discriminate against localities outside the State of Illinois and grant preferences to localities within the State of Illinois in the charges which it makes for identically the same service in transporting over its rails carloads of coal. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(3) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from contravenes

Section 3 of the Act to Regulate Commerce as amended in that said order requires plaintiff in error to give undue and unreasonable preference and advantage to persons, companies, firms and corporations who are producers and shippers of coal and who are located within the State of Illinois, in that said order requires plaintiff in error to subject persons, companies, firms and corporations who are producers of coal outside the State of Illinois to undue and unreasonable prejudice and disadvantage through obliging plaintiff in error to charge a less rate for the transportation of coal in carloads between specified points on its rails when the coal originates within said state than it is lawfully permitted to charge and does charge for identically the same service on interstate shipments of coal. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(4) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from contravenes Section 6 of the Act to Regulate Commerce as amended in that said order requires plaintiff in error to charge different and less compensation for transportation of property, to wit: carloads of coal, and for services in connection therewith, between certain points named in tariffs on file with the Interstate Commerce Commission than the rates and charges specified in said tariffs so on file. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(5) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from contravenes Section 13 of the Act to Regulate Commerce as amended in that said Railroad and Warehouse Commission disregarded its right and privilege secured by said section to have the Interstate Commerce Commission investigate any complaint forwarded by the Railroad Com-

mission of any state and obtain such relief as the complaint might merit and in lieu thereof attempted to substitute power and assumed authority of its own to investigate and regulate a feature of commerce in which interstate and intrastate commerce are commingled and over which the Federal Congress, by action of the Interstate Commerce Commission, had already assumed jurisdiction. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(6) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from contravenes Section 15 of the Act to Regulate Commerce as amended in that said section delegates to the Interstate Commerce Commission power and authority over through rates and joint rates and power and authority to prescribe just and reasonable individual or joint charge or charges for through transportation participated in by two or more carriers and the Railroad and Warehouse Commission of the State of Illinois, by its order in this case, regulates, or assumes to regulate, one factor of a through rate without regard to the through rate as a whole, which factor is applicable alike on interstate and intrastate traffic and which factor the Interstate Commerce Commission, acting within its lawful functions, held to be a factor not subject to independent regulation apart from the through rate. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(7) The order of the Railroad and Warehouse Commission of the State of Illinois appealed from is unreasonable and unlawful in that said commission, without finding the through rate excessive or discriminatory and without facts before it on which to make such finding, entered said order to reduce, solely for the benefit of Illinois shippers and producers of coal, the transportation

charges for a factor of the transportation service involved that is common to interstate and Illinois movements of coal and over which factor the Interstate Commerce Commission had previously assumed jurisdiction and held, on the same record, said factor was not shown to be subject to separate regulation apart from the through rate as a whole. The Supreme Court of Illinois, therefore, erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

(8) The Interstate Commerce Commission having held, on the same evidence that was presented to the Railroad and Warehouse Commission of the State of Illinois in this case, that the Chicago, Milwaukee & St. Paul Railway Company was not obliged to reduce its charges for that part of the through service involved in both interstate and Illinois transportation of coal unless and until the through rate was shown to be unreasonable or discriminatory, the order of the Railroad and Warehouse Commission of the State of Illinois appealed from, being in conflict with the opinion of the Interstate Commerce Commission entered on the same state of facts, is void, because of being in contravention of the Act to Regulate Commerce as amended and of paragraph three of Section 8 of Article I. of the Constitution of the United States. The Supreme Court of Illinois, therefore, erred in affirming and giving effect to said order of said Railroad and Warehouse Commission.

(9) There is insufficient evidence in the record to justify the order of rate reduction entered by the Railroad and Warehouse Commission of Illinois. This question of fact having been so determined on the same record by the Interstate Commerce Commission, the Supreme Court of Illinois erred in sustaining and affirming said order of the Railroad and Warehouse Commission of Illinois.

BRIEF OF ARGUMENT.

The order of the Railroad and Warehouse Commission of the State of Illinois, the validity of which this court is asked to pass upon, is unlawful for the following reasons:

I.

The order is unlawful in that it is an attempt by the Illinois Commission to exercise assumed jurisdiction of a rate question over which the Interstate Commerce Commission had previously assumed jurisdiction and has indicated the manner in which said rate question might be regulated and the manner in which it might not be regulated.

Northern Pacific Ry. Co. v. *State of Washington*, 222 U. S., 370.

Poehlmann Bros. Company v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.

The Illinois Commission assumes, by the order, to regulate the question in the manner which the Interstate Commerce Commission has held it should not be regulated, namely: by regulating one factor, to wit: the factor common to interstate and intrastate shipments alike, without regulating the through rate as a whole. (See Opinion of Illinois Commission, Trans., pp. 11, 12.)

The two Commissions acted on identically the same record. The record on which the Interstate Commerce Commission acted was, by stipulation, made the record upon which the Illinois Commission acted. (Trans., 14; Rec., 49.) The action of the Interstate Commerce Commission on this question, and its report of its conclusions,

will be found in *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.

> "There is no room in our scheme of Government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations."
>
> *Minnesota Rate Cases*, 230 U. S., 352, 399.

See also:

Mondou v. *N. Y., N. H. & H. R. R. Co.*, 223 U. S., 1, 47, 54, 55.

II.

> "In matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting State legislation."
>
> *Minnesota Rate Cases*, 230 U. S., 352, 399, 400.

See also:

So. Ry. Co. v. *Reid*, 222 U. S., 424, 436.

Northern Pac. Ry. Co. v. *Washington*, 222 U. S., 370, 378.

Gulf, Colorado & Santa Fe Ry. Co. v. *Hefley*, 158 U. S., 98, 103, 104.

Bowman v. *C. & N. W. Ry. Co.*, 125 U. S., 465, 481, 485.

Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S., 196, 204.

County of Mobile v. *Kimball*, 102 U. S., 691, 697.

Welton v. *Missouri*, 91 U. S., 275, 280.

Ex parte McNiel, 13 Wall., 236, 240.

Cooley v. *Board of Wardens*, 12 How., 299, 319.

III.

The Interstate Commerce Commission is clothed with power, granted by Congress through the Act to Regulate Commerce, adequate to meet the varying exigencies that arise and to protect the national interests by securing the freedom of interstate commercial intercourse from local control.

Houston, East & West Texas Ry. Co. v. *U. S.*, and *Texas & Pacific Ry. Co.* v. *U. S.* (Shreveport Case), 234 U. S., 342, 350, 351.

See also:

Minnesota Rate Cases, 230 U. S., 352, 398, 399.

Second Employers' Liability Cases, 223 U. S., 1, 47, 53, 54.

Smith v. *Alabama*, 124 U. S., 465, 473.

County of Mobile v. *Kimball*, 102 U. S., 691, 696, 697.

Brown v. *Maryland*, 12 Wheat., 419, 446.

Gibbons v. *Ogden*, 9 Wheat., 1, 196, 224.

IV.

"The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 354.

See also:

L. & N. R. R. v. *Eubank*, 184 U. S., 27.

V.

On the question of whether the order appealed from is in fact injurious and whether it does actually involve substantial property rights, we direct attention to the undisputed evidence that it reduces the gross earnings of the plaintiff in error on the coal in questi st fifty per cent. That the original complainant, Poehlmann Bros. Company, shipped two-thirds of its coal interstate from points of origin outside the State of Illinois prior to the decision of the Interstate Commerce Commission (Trans., 25; Rec., 105) is undisputed; that when the Interstate Commerce Commission failed to reduce the rate and after Poehlmann Bros. Company instituted proceedings before the Illinois Commission that shipper changed its patronage from Eastern mines to Illinois mines and receives now ninety-five per cent. of its coal from Illinois points of origin (Trans., 15; Rec., 59) is admitted; that it ships approximately 30,000 tons of coal per annum to its plant at Morton Grove (Trans., 24; Rec., 105. Trans., 15; Rec., 58, 59) is undisputed; that the plaintiff in error's rate of 40 cents per net ton was reduced by order of the State Commission to not exceed 20 cents per net ton on the coal in question (Trans., 12; Rec., 35) is also undisputed; that plaintiff in error would lose $6,000 per year on Poehlmann Bros. Company's coal, alone, by the enforcement of the order appealed from is obvious; that producers of coal in other states than Illinois, who were formerly patronized, will be discriminated against and will lose business to the Illinois competitor, is already an established fact.

> "That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil

is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a State may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 354.

VI.

"It is also clear that, in removing the injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 355.

When the carrier is charging a rate for transportation which the Interstate Commerce Commission holds is not shown to be excessive or discriminatory, and is ordered by a State Commission to reduce that charge fifty per cent. in favor of the intrastate business, an obvious dis-

crimination must result from an obedience of such order. The carrier, in such case, has the legal right to choose whether it will eliminate the discrimination by reducing both the intrastate rate and the interstate rate or by disregarding the State Commission's order to reduce the intrastate rate, and continuing to maintain both rates on the interstate rate basis.

Great Northern Railway Company v. *State of Minnesota*, 238 U. S., 340.

VII.

The order appealed from commands and directs the plaintiff in error to perform transportation services for intrastate shippers of coal at the rate of 20 cents per ton, or one-half the transportation charge it is lawfully collecting from interstate shippers for identically the same service. Said order of the Illinois Commission was affirmed by the Supreme Court of Illinois after the Interstate Commerce Commission, considering the complaint of the same complaining party, on the same evidence as was before the Illinois Commission, had sustained and upheld as lawful the charge of 40 cents per ton for transporting the coal in question over the same rails and between the same points involved in the Illinois Commission's decision and order.

> "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 351, 352.

See also:

Illinois Central R. R. Co. v. *Behrens*, 233 U. S., 473.

Interstate Commerce Commission v. *Goodrich Transit Company*, 224 U. S., 194, 205, 213.

Second Employers' Liability Cases, 223 U. S., 1, 48, 51.

Southern Railway Co. v. *U. S.*, 222 U. S., 20, 26, 27.

B. & O. R. R. Co. v. *Interstate Commerce Commission*, 221 U. S., 612, 618.

VIII.

"The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to the Federal care."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 351.

IX.

The authority of Congress, exercised through the Interstate Commerce Commission, extends to intrastate common carriers that are instruments of interstate commerce in such way as necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of interstate service, and to the maintenance of conditions under which interstate commerce

may be conducted upon fair terms and without molestation or hindrance.

Texas & Pacific Ry. Co. v. *U. S.*, 234 U. S., 342, 351.

X.

This court is not asked to revise the construction placed upon a State Statute by the State Court, but is asked to determine whether the application made of a State Statute is in this instance in contravention of the Commerce Clause of the Constitution and the provisions of the Act to Regulate Commerce. Questions of this character are for the determination of this court.

Southwestern Telegraph & Telephone Company v. *Danaher*, 238 U. S., 482, 489.

A State exceeds its lawful authority when it attempts to regulate rates applicable on interstate commerce or to subject the operation of carriers in the course of such transportation to requirements that are unreasonable or pass beyond the bounds of suitable local protection.

Minnesota Rate Cases, 230 U. S., 352, 401.

See also:

Yazoo & Miss. Valley R. Co. v. *Greenwood Grocery Co.*, 227 U. S., 1.

Texas & N. O. R. R. v. *Sabine Tram Co.*, 227 U. S., 111.

R. R. Commission of Ohio v. *Worthington*, 225 U. S., 101.

Herndon v. *C. R. I. & P. R. R. Co.*, 218 U. S., 135.

St. Louis S. W. Ry. Co. v. *Arkansas*, 217 U. S., 136.

Houston & T. C. R. R. Co. v. *Mayes*, 210 U. S., 321.

Atlantic Coast Line v. *Wharton*, 207 U. S., 328.

Miss. R. R. Commission v. *I. C. R. R. Co.*, 203 U. S., 335.
McNeill v. *So. Ry. Co.*, 202 U. S., 543.
Hanley v. *K. C. So. Ry. Co.*, 187 U. S., 617.
Louisville & Nashville R. R. Co. v. *Eubank*, 184 U. S., 27.
C. C. C. & St. L. Ry. Co. v. *Illinois*, 177 U. S., 514.
Covington Bridge Co. v. *Kentucky*, 154 U. S., 204.
Wabash Ry. Co. v. *Illinois*, 118 U. S., 557, 577.
Hall v. *Decuir*, 95 U. S., 485, 488.

XI.

"This court will review the finding of facts by a state court (1) where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts. *Kansas City Southern Ry.* v. *Albers Commission Co.*, 223 U. S., 573, 591; *Creswill* v. *Knights of Pythias*, 225 U. S., 246, 261; *Wood* v. *Chesborough*, 228 U. S., 672, 678."

Northern Pacific Railway v. *North Dakota*, 236 U. S., 585, 593.

The Interstate Commerce Commission, having examined the record in this case and entered its conclusions thereon that said record contained insufficient facts to warrant a reduction of the rate in question, it follows that the finding of the Illinois Commission is without sustaining evidence, is arbitrary, amounts to administrative fiat and comes under the Constitution's condemnation of all arbitrary exercise of power.

This court said, in *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S., 88, 91:

> "The statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. * * * It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

XII.

The order of the Illinois Commission, entered on the petition of a shipper, is not a regulation of the through rate as such, but is, in effect, the fixing of divisions as between carriers participating in the through rate when the carriers have not failed to agree on divisions and have not asked the Commission to fix divisions, and since the traffic involved is intermingled state and interstate traffic, the State Commission exceeded its powers and invaded the function of the Interstate Commerce Commission, delegated by Section 15 of the Act to Regulate Commerce as amended.

XIII.

Plaintiff in error exhausted its means of remedy in the State tribunals without gaining relief.

C. M. & St. P. Ry. Co. v. *Public Utilities Commission*, 268 Ill., 49.

XIV.

The rate of 40 cents per ton, not having been shown to have been increased since January 1, 1910, is presumed to be a reasonable rate. The burden of proving its unreasonableness rested upon the complainant.

Section 15 of the Act to Regulate Commerce.

That complainant failed to sustain the burden of proof was specifically found by the Interstate Commerce Commission in passing upon the evidence in this record, which evidence was made the basis of the order entered by the Illinois Commission.

Poehlmann Bros. Company v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.

ARGUMENT.

I.

THE CONFLICT OF STATE AUTHORITY WITH INTERSTATE AUTHORITY IN THE REGULATION OF THE RATE IN QUESTION.

Let it be borne in mind from the beginning that the record before the Illinois Commission, on which the order appealed from was entered, is the same record that was previously considered by the Interstate Commerce Commission. (Trans., 19; Rec., 69-89.) Let it also be borne in mind that identically the same transportation service and identically the same questions of compensation therefor, by said record presented, were passed upon by the two Commissions.

The Interstate Commerce Commission had the questions here involved submitted to it and assumed jurisdiction over same on October 26, 1912. (See *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89.) The petitioner asked the Interstate Commerce Commission then, as it subsequently did the Illinois Commission, to reduce the rate on coal between Chicago and Morton Grove.

The Interstate Commerce Commission, in denying the petition, held:

(1) That the evidence was insufficient to warrant a reduction in the rate complained of.

(2) That the factor of the rate under attack should not be regulated apart from the through rate as a whole, and

(3) That there was a delicate rate relationship or rate adjustment involved which should not be changed on the evidence introduced in this record.

The following is quoted from the Interstate Commerce Commission's opinion in *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92:

"While, as stated, only the delivering line is made a party defendant, the comparisons made by complainant are nearly all with respect to through rates, or factors of through rates, from points of origin to destinations within, or just beyond, the Chicago switching district. The adjustment of rates within this general district is an exceedingly complex one. Ordinary prudence dictates that we should not prescribe a change in this adjustment, or require a reduction in any specific rate therein, except after careful examination of all the facts, both with respect to the rate itself and also its relation to the general adjustment.

Upon the record it clearly appears that complainant is not discriminated against by defendant.

The traffic in question is through traffic. The rate specifically attacked, although a separately established rate of the delivering line, cannot be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Some regard must be had to the measure of the through rate as an entirety, and neither the through rate nor the carriers responsible for it and participating in it are before us in this proceeding.

Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rate under attack, we must refrain from expressing any conclusion upon the reasonableness of either rate. The complaint must be dismissed, and it will be so ordered."

The Illinois Commission reached almost diametrically opposite conclusions, and took action directly conflicting with that taken by the Interstate Commerce Commission. The Illinois Commission, while agreeing with the Interstate Commerce Commission that there was no evidence in the record on which the through rate could be

changed or regulated, differed with the Interstate Commerce Commission as to the necessity of regulating the through rate as a whole and held that there was no question of propriety of rates that should prevent the case being disposed of by regulating that factor of the through rate involved in the haul from Chicago to Morton Grove, and differed with the Interstate Commerce Commission in concluding that the proof in this record satisfactorily showed the rate of forty cents per ton to be one hundred per cent. higher than the rate it determined to be the proper one in the order appealed from.

The following is quoted from the opinion of the Illinois Commission, which constitutes a part of the record in this case:

> "While the complaint herein asked for the establishment of through rates via the several defendants' roads herein from points in Illinois to Morton Grove, the record also shows that the only rate attacked by the complainant is the charge of forty cents per net ton made by the Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove and all of the evidence before the Commission in this case is directed against the unreasonableness of this rate.
>
> The reasonableness of the charge of the other defendant roads for the line haul was not attacked in any manner in this proceeding, and no evidence offered upon that subject. Hence we assume that the line haul charge is considered reasonable, and without going into detail upon that branch of the case, it is sufficient to say that the Commission does not feel it necessary at this time to enter into the question of discrimination as charged in the complaint, nor does it feel that it is necessary or that it will be justified in entering into the question of through rates between the other defendant roads and the defendant, Chicago, Milwaukee & St. Paul Railway Company, from the coal producing district of Illinois to Morton Grove, believing that the matter can be

properly disposed of without entering into that question.

This leaves for consideration then the one question of the reasonableness or the unreasonableness of the charge of forty cents per net ton by the defendant, Chicago, Milwaukee & St. Paul Railway Company, between Galewood and Morton Grove on coal and manure.

After a careful investigation of the rates charged by the defendant, Chicago, Milwaukee & St. Paul Railway Company, from Galewood to other stations on its lines of road in the vicinity of Morton Grove, and also an investigation of the rates charged by other defendant roads in that locality, for similar distance, when compared with the charge made by the defendant, Chicago, Milwaukee & St. Paul Railway Company, from Galewood to Morton Grove, the Commission believes said charge of forty cents per net ton to be an unreasonable charge.

* * * * *

It is therefore ordered, adjudged and decreed by the Commission that the said rate of forty cents per net ton on coal from Galewood to Morton Grove be, and the same is hereby reduced and fixed at a charge of not to exceed twenty cents per net ton on coal.

* * * * *

Commission finding that the charge herein made and specified is a reasonable charge therefor.

By order of the Commission this 25th day of October, 1913, dated at Springfield, Illinois." (Trans., 11, 12; Rec., 33-35.)

It will be noted in the opinions of the respective Commissions that the two petitions were also essentially the same. Each petition attacked the rate on coal, in carloads, from Chicago to Morton Grove. Each petition asked that the through rate be regulated. The petition before the Interstate Commerce Commission, as is shown in that Commission's opinion, introduced no defendant in the case other than the Chicago, Milwaukee & St. Paul Railway Company. The petition before the Illinois Commission differed in that it made certain line haul carriers

parties defendant. No evidence was introduced at the hearing, however, relative to the charges of other carriers or relative to the through rate. (Trans., 11; Rec., 33.)

Without qualification it may be said the two petitions were identical, in so far as the issues on which proof was introduced, are concerned.

> "This court will review the finding of facts by a state court (1) where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts. *Kansas City Southern Ry.* v. *Albers Commission Co.*, 223 U. S., 573, 591; *Creswill* v. *Knights of Pythias*, 225 U. S., 246, 261; *Wood* v. *Chesborough*, 228 U. S., 672, 678."
>
> *Northern Pacific Railway* v. *North Dakota*, 236 U. S., 585, 593.

The points of conflict as between the State and Federal authority, which have developed out of the same pleadings and same evidence, may be briefly summarized as follows:

One.

The Federal Commission held that the evidence introduced did not justify a reduction in the forty-cent factor of the through rate, this forty-cent charge being for that portion of the through haul between Chicago and Morton Grove.

The Illinois Commission held that the same evidence showed the forty-cent factor to be one hundred per cent. too high and justified the reduction to twenty cents.

Two.

The Federal Commission held that the forty-cent rate was a factor of a through rate which ought not

to be regulated independent of, and apart from, the through rate as a whole.

The Illinois Commission held that it was not necessary to regulate the through rate as a whole and that the forty-cent factor might properly be regulated entirely independent of and without regard to the regulation of the through rate.

Three.

The Federal Commission considered the propriety of ordering a reduction in the forty-cent rate factor and announced this conclusion:

> "The adjustment of rates within this general district is an exceedingly complex one. Ordinary prudence dictates that we should not prescribe a change in this adjustment, or require a reduction in any specific rate therein, except after careful examination of all the facts, both with respect to the rate itself and also its relation to the general adjustment." (*Poehlmann Bros. Co.* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92.)

The Illinois Commission disregarded questions of the propriety of disturbing the important rate relationships and announced that it believed "the matter can be properly disposed of without entering into that question." (Trans., 12; Rec., 34.)

A similar condition in principle arose in *Northern Pacific Railway Company* v. *State of Washington*, 222 U. S., 370. In that case the Federal Congress had taken jurisdiction of hours of service of certain employees of carriers engaged in interstate commerce and, incidental to regulating the hours of service, provided that the regulation should not become effective until after a specific future date. The State of Washington, subsequent to the passage of the act but before the date on which it was to become effective, attempted to regulate the hours of service of employees engaged in commingled interstate and intrastate commerce. This court held that Congress, in allowing the carriers an additional

period in which to adjust themselves to the requirements of the new law, had barred the State from interfering during such period in the way of State regulation of such hours of service.

Mr. Justice White, in delivering the opinion of the court, said in part as follows:

> "We are of opinion that it becomes manifest that it would cause the statute to destroy itself to give to the clause postponing its operation for one year the meaning which must be affixed to it in order to hold that during the year of postponement state police laws applied. * * * The purpose of Congress in giving time was to enable the necessary adjustments to be made by the railroads to meet the new conditions created by the act, a purpose which would of course be frustrated by giving to the provision as to postponement the significance which would destroy the very reason which caused it to be enacted."

In the case at bar Congress, speaking through the interstate Commerce Commission, provided that the forty-cent per ton rate on coal from Chicago to Morton Grove should be exempt from reduction or other regulation unless and until evidence was presented as to the reasonableness and lawfulness of the through rate of which the forty-cent rate is a part. Illinois has attempted, by the order appealed from, to interpose State regulation during the exempted period just as did the State of Washington in the case quoted from above.

The following portion of the opinion in the Washington case, *supra,* is also pertinent:

> "It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject or manifests its purpose

to call into play its exclusive power. This being the conceded premise upon which alone the state law could have been made applicable, it results that as the enactment by Congress of the law in question was an assertion of its power, by the fact alone of such manifestation that subject was at once removed from the sphere of the operation of the authority of the State. To admit the fundamental principle and yet to reason that because Congress chose to make its prohibitions take effect only after a year, the matter with which Congress dealt remained subject to state power, is to cause the act of Congress to destroy itself; that is, to give effect to the will of Congress as embodied in the postponing provision for the purpose of overriding and rendering ineffective the expression of the will of Congress to bring the subject within its control—a manifestation arising from the mere fact of the enactment of the statute."

While abstractly considered, the rate from Chicago to Morton Grove is a local state rate, yet, as applied to the traffic that moves under it, it is part of a through rate for the through haul of traffic that is interstate. The Interstate Commerce Commission so held in *Poehlmann Bros.* v. *Railway Co., supra,* where this rate and its relations to other rates were directly involved. The question presented, therefore, is not simply one of transportation that is "wholly within one state," but embraces transportation that is interstate in character. The phrase in Section 1 of the Interstate Commerce Act, "wholly within one state," has "appropriate reference to exclusively intrastate traffic separately considered; to the regulation of domestic commerce as such." *Houston & Texas Ry.* v. *U. S., supra,* 358.

This language of Section 1 does not control where interstate commerce is directly involved. Interstate commerce is directly involved here, for the Interstate Commerce Commission in dealing with this precise rate

has found it to be a part of a through interstate rate, and that its reasonableness could not be considered or determined "*entirely apart from its relationship to the through rate for the through haul from interstate points of origin.*" *Poehlmann Bros.* v. *Ry. Co., supra,* 92.

This finding precludes the exercise of the state's power, through its Commission, to deal with this rate separately as a local rate. If this were not so, the State Commission would have power to override the Federal Commission, and to nullify its findings and orders. The fact that the rate in question is related to, and used in connection with, a rate that is wholly local to the state, does not derogate from the complete and paramount authority of the Federal Commission, when, as here, the rate in controversy has been found by that Commission to be part of a through interstate rate. For, as said by Mr. Justice Hughes, in *Houston & Texas Ry.* v. *U. S., supra,* 351:

> "wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves a control of the other, it is Congress, and not the states, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

The Illinois Commission has attempted to do here precisely what the Texas Commission sought to accomplish in the Shreveport case, *Houston & Texas Ry. Co.* v. *U. S., supra,* viz: to compel the carrier to either reduce the interstate rates, or discriminate in favor of intrastate shippers.

II.

THE DISCRIMINATION AGAINST INTERSTATE COMMERCE WHICH THE ORDER APPEALED FROM ENTAILS.

The complainant, Poehlmann Bros. Company, proved by admissions of record, that to give effect to the Illinois Commission's order is to burden interstate commerce, to discriminate against localities and shippers in other states, to give undue preference to localities and shippers in Illinois and to deprive the interstate carrier of interstate commerce that it has enjoyed and will continue to enjoy if the ruling of the Interstate Commerce Commission stands as controlling and conclusive, unimpaired by the conflicting ruling of the State Commission.

At the hearing before the Interstate Commerce Commission, June 14th, 1912, Mr. Poehlmann testified that Poehlmann Bros. Company consumed approximately 30,000 tons of coal a year at its Morton Grove plant and that two-thirds of that quantity of coal came from points of origin outside of the State of Illinois. (Trans., 24, 25; Rec., 105, 106.) The same witness, testifying before the Illinois Commission in 1914, testified as follows:

> "Q. About how many tons of coal a year do you consume in your business?
>
> A. Approximately 30,000.
>
> Q. What portion of your coal comes from mines in the State of Illinois?
>
> A. At the present time almost all of it." (Trans., 15; Rec., 58, 59.)

The foregoing is undisputed evidence that came from the petitioner.

It will be noted that Mr. Poehlmann testified before the Illinois Commission about two years after he testified before the Interstate Commerce Commission. It is ob-

vious that in that period of time Mr. Poehlmann had reached the conclusion that there was a prospect of the complaint succeeding before the Illinois Commission and failing before the Interstate Commerce Commission. If the Illinois Commission granted reparation, the reparation thus allowed could be collected only on Illinois coal. Poehlmann Bros. Company, consequently, began purchasing substantially all of its coal in Illinois, whereas previously it had purchased two-thirds of it from points of production outside the State of Illinois.

If the Illinois Commission's order is to be given effect, plaintiff in error will receive twenty cents per ton less for transporting the 30,000 tons per annum of coal consumed by Poehlmann Bros. Company. This means that it will receive $6,000 per annum less than previously for the same service, unless a part of the coal comes from interstate points of origin. Mr. Poehlmann's testimony shows that exigency is guarded against. The 20,000 tons of coal that previously moved from interstate destinations, if it continued to move from interstate destinations would net the carrier $4,000 per annum more than the carrier will receive on the same quantity of coal moving intrastate from Illinois points of origin, if the Illinois Commission's order is obeyed.

The foregoing is merely an illustration drawn from the admissions of the complainant and by no means indicates the full extent to which the order appealed from burdens and discriminates against interstate commerce. The plaintiff in error will discriminate against interstate coal if it reduces its forty-cent rate from Chicago to Morton Grove on Illinois coal without making corresponding reductions on interstate coal on which it would perform precisely the same transportation service. Such discrimination would be a violation of Sections 2 and 3 of the Act to

Regulate Commerce. The only way to avoid such discrimination and still comply with the Illinois Commission's order appealed from would be to reduce also the rate on interstate coal from forty cents to twenty cents per ton.

The Interstate Commerce Commission, in passing upon plaintiff in error's rights in this connection, held that on this record plaintiff in error could not be required to accept less than its present rate of forty cents per ton on interstate movements. Here then is a situation where the carrier cannot avail itself of the lawful rate the Interstate Commerce Commission has sanctioned without being guilty of the unlawful discrimination which a compliance with the order of the Illinois Commission entails.

Considering separately, for the moment, the plaintiff in error's lawful rights in the premises, can it be doubted that it is legally entitled to collect its full rate of forty cents per ton, on interstate coal in accordance with its tariff passed upon and sustained by the Interstate Commerce Commission? Can there be any doubt that an order of the Illinois Commission must be invalid that prescribes a preferential rate under these circumstances for the transportation of intrastate coal, a compliance with which will result in actual discrimination against interstate commerce?

This court has answered this question in the following language:

> "The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority." (*Houston & Texas Ry. Co.* v. *U. S.*, 234 U. S., 342, 354.)

The order appealed from does not follow the standard set by Federal authority but is in direct conflict therewith.

The effect of complying with the Illinois Commission's order would by no means be confined to the Poehlmann case, nor to the coal consumed at the Town of Morton Grove. It would necessarily extend to many other stations. Under the Fourth Section of the Act to Regulate Commerce and under Section 25 of the Illinois Act to Establish a Board of Railroad and Warehouse Commissioners as amended June 10, 1911, a carrier may not charge more for a short haul than for a long haul over the same line of railway and in the same direction when the shorter is included within the longer. If the rate from Chicago to Morton Grove is cut from forty cents to twenty cents, the rates to intermediate points must be reduced to the twenty-cent basis. Moreover, the rate to the station beyond Morton Grove cannot be one hundred per cent. higher than the rate to the station of Morton Grove. If the forty-cent rate is reduced to a twenty-cent rate to Morton Grove, corresponding reductions must be made to stations beyond in order that the general level of rates and relation of rates as between those adjacent stations may be fair and reasonable.

But the effect of a compliance with the Illinois Commission's order would extend far beyond all of this. If the rate is reduced to Morton Grove and stations in its vicinity on that branch of plaintiff in error's line, which runs from Chicago to Milwaukee, corresponding reductions must be made on its other branches running north and west from Chicago, namely: the branch from Chicago to Evanston, Illinois, and the branch from Chicago to Elgin, Illinois, and points beyond.

III.

FAILURE OF PROOF TO JUSTIFY THE ORDER OF REDUCTION IN RATE.

The Interstate Commerce Commission, in the exercise of its sound judgment and discretion within the field where it is supreme, declared that there was insufficient evidence in the present record to warrant a reduction or other regulation of the rate which the State Commission reduced. *Poehlmann Bros Co.* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89, 92. When the Interstate Commerce Commission found the evidence was insufficient to warrant a reduction in the rate, it was powerless, under the Act, to reduce it.

This court said, in *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S., 88, 91:

> "The statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. * * * It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

The Interstate Commerce Commission, in passing upon the facts in this case, was governed by the law outlined in the foregoing quotation. It declined to disregard all rules of evidence and capriciously make findings by administrative fiat. Under these circumstances, we are apparently forced to the conclusion that the Illinois Commission's order is merely administrative fiat. To reason

otherwise is to argue that the Interstate Commerce Commission's judgment is wrong within the very province where its judgment is conclusive.

This court has several times recognized in its opinions that the work of solving the details and intricacies of rate regulation has been delegated by Congress to the Interstate Commerce Commission, and this court has held that acting within that field the Interstate Commerce Commission is supreme and its acts are not reviewable here except where the Commission exceeds its authority or otherwise fails to conform to the requirements or the limitations of the Act to Regulate Commerce.

Interstate Commerce Commission v. *I. C. R. R. Co.*, 215 U. S., 452.

B. & O. R. R. Co. v. *Pitcairn Coal Co.*, 215 U. S., 481.

Southern Pacific Co. v. *I. C. C.*, 219 U. S., 433.

IV.

THE ORDER APPEALED FROM, IF COMPLIED WITH, WOULD CAUSE DISCRIMINATION AGAINST PERSONS AND LOCALITIES IN VIOLATION OF SECTION 3 OF THE ACT TO REGULATE COMMERCE.

Section 3 of the Act to Regulate Commerce contains the following provision:

> "That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

It is obvious that charging twenty cents for hauling the intrastate coal from Chicago to Morton Grove and charging one hundred per cent. more for the same service on interstate coal, would violate the foregoing provision of Section 3, since it would necessarily give substantial advantage to coal producing localities in Illinois over coal producing localities across the state line in Indiana. Moreover, the persons, companies, firms and corporations engaged in the producing and merchandising of coal on the west side of the Illinois-Indiana state line would have an advantage over those on the east side of that line. The tendency of this advantage would be to build up the localities and industries in Illinois, that have to do with the producing and merchandising of coal, and retard the growth and development of those to the east of the state line.

V.

THE ORDER APPEALED FROM IS IN CONTRAVENTION OF SECTION 13 OF THE ACT TO REGULATE COMMERCE.

It is, of course, conceded that a State Commission may have the right, and even the duty, to guard state interests where intrastate and interstate commerce are commingled and interdependent, as in the case at bar.

That such interests represented by a State Commission may be preserved and complaints involving same may be orderly disposed of without a conflict between State and Federal authority, Congress has provided, in Section 13 of the Act to Regulate Commerce, as follows:

> "Said Commission (the Interstate Commerce Commission) shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any state or territory at the request of such Commissioner or Commission."

In the case at bar the Illinois Commission did not see fit to avail itself of the means thus provided of procuring a harmonious adjustment of the questions involving commingled and interdependent state and interstate commerce. On the contrary, the Illinois Commission, disregarding the foregoing provision, and disregarding the fact that the Interstate Commerce Commission had already assumed jurisdiction of these questions, entered upon an individual investigation of its own which has resulted in an opinion by that Commission directly in conflict with the opinion of the Interstate Commerce Commission.

We submit this action of the Illinois Commission is in contravention of Section 13 of the Act to Regulate Commerce.

VI.

THE ORDER APPEALED FROM IS IN CONTRAVENTION OF SECTION 15 OF THE ACT TO REGULATE COMMERCE.

Congress, by Section 15 of the Act to Regulate Commerce, specifically delegated to the Interstate Commerce Commission jurisdiction over joint through rates and authority "to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair and reasonable to be thereafter followed."

The Interstate Commerce Commission, in the case at bar, determined that the practice to be followed in respect of the joint rate in question should be that of regulating the through rate as a whole; that it was not proper to regulate one factor only of this joint rate,

and that the charge complained of was not shown to be unreasonable.

We submit the Illinois Commission's opinion and order contravene Section 15 of the Act to Regulate Commerce to the extent that the Illinois Commission has thereby arrogated to itself jurisdiction to regulate a joint through rate which involves commingled and interdependent interstate and intrastate shipments. The order of the State Commission does not follow or conform to the finding of the Interstate Commerce Commission but directly conflicts and interferes with that finding. This court, in *Houston & Texas Ry.* v. *U. S.*, 234 U. S., 342, 354, said:

> "The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority."

VII.

THE ORDER APPEALED FROM IS IN CONTRAVENTION OF SECTION 6 OF THE ACT TO REGULATE COMMERCE.

Section 6 of the Act to Regulate Commerce reads in part as follows:

> "Nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith between points named in such tariffs than the rates, fares and charges which are specified in the tariff filed and in effect at the time."

The published tariff of plaintiff in error, lawfully in effect, prescribes a rate of forty cents per ton as its charge for transporting coal from Chicago to Morton

Grove. The Illinois Commission, by the order appealed from, requires the plaintiff in error to accept the less rate of twenty cents per ton for that service whenever the coal originates at points in Illinois.

The Interstate Commerce Commission has expressly held that this factor of transportation is an inseparable part of the through haul and has held in substance that on account of its relation to various rates, including, of course, the interstate rates and intrastate rates of which it forms an unvarying factor, the charge should remain relatively constant or unvarying. It may not, under the Interstate Commerce Commission's rule, be less when in combination with one set of rates than when in combination with another set of rates. It is in this connection that most clearly is revealed the wisdom of giving to the Interstate Commerce Commission exclusive authority over rates that are partly interstate and partly intrastate in their character.

The Interstate Commerce Commission, having taken this jurisdiction, the carrier can no longer say that on transportation that originates in Illinois a lower and different rate will be charged than is published in its interstate tariffs to be applied on interstate and commingled interstate and intrastate traffic. Plaintiff in error will have to do this, however, if it complies with the order appealed from.

We submit the order of the Illinois Commission is thus shown to be in contravention of Section 6 of the Act to Regulate Commerce.

VIII.

THE SHREVEPORT PRINCIPLE.

We present to this court a question of unusual gravity and importance that has arisen under the Act to Regulate Commerce as amended. The question is somewhat analogous to the central questions involved in the *Minnesota Rate Case*, 230 U. S., 352, and in the so-called Shreveport Case, *T. & P. Ry. Co.* v. *U. S.*, 234 U. S., 342.

This court is asked to say whether the general principle of law declared in the Shreveport Case should control in cases involving facts and conditions such as are presented by this record.

The amendment to the Act to Regulate Commerce, under which the central question here presented has arisen, is relatively new. Sufficient time has not elapsed since its adoption to bring before this court many of the academic questions of broad and general application that must, in the course of time, be finally dealt with here.

This court has not yet declared whether a common carrier, subject to the Act to Regulate Commerce, must submit to having its rates and earnings reduced by state authority for a service applicable alike to interstate and intrastate transportation when the Interstate Commerce Commission has already passed on the same state of facts in the same record and held the facts insufficient to support an order reducing the rates.

This court has not yet said whether, under the conditions referred to in the preceding paragraph, the carrier can be forced by the action of a State Commission to reduce its charges for interstate carriage that the Inter-

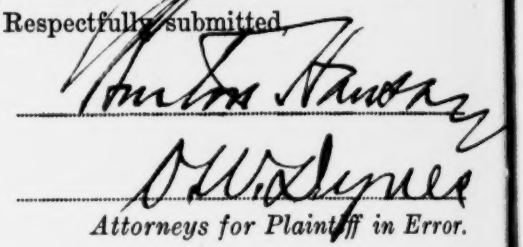
state Commerce Commission has held not to have been shown unreasonable or to be forced to the alternative of charging 100 per cent. more to the interstate shipper than the State Commission allows it to charge the intrastate shipper for that part of the service that is common to both.

This court has not yet said that the action of the Interstate Commerce Commission must be regarded as conclusive and preclude contrary action by a State Commission when the former holds that a through rate, one factor of which is common to interstate as well as intrastate traffic, must be regulated as a whole instead of merely by regulating the one factor thereof which is common to interstate and intrastate traffic.

These are all questions entailing the construction of the Federal Act to Regulate Commerce that can only be finally determined by this court.

Plaintiff in error contends that the principle of the so-called Shreveport Case governs and that a just disposition of this case requires the application of that principle to the state of facts presented by this record.

Respectfully submitted,



Attorneys for Plaintiff in Error.

FILE COPY.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1915.

No. ~~495.~~

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

MOTIONS TO DISMISS, OR AFFIRM, OR TRANSFER TO SUMMARY DOCKET, AND BRIEF AND ARGUMENT IN SUPPORT OF SAID MOTIONS.

EVERETT JENNINGS,
M. F. GALLAGHER,
ATTORNEYS FOR DEFENDANT IN ERROR.

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Now comes the defendant in error, State Public Utilities Commission of Illinois, by Everett Jennings and M. F. Gallagher, its attorneys, and respectfully moves this Honorable Court:

1. To dismiss the writ of error herein on the ground that this court has no jurisdiction thereof, because there is no color of ground for the averment that the judgment of the Supreme Court of Illinois infringes upon the Federal Constitution, or the Act to Regulate Commerce, or places a direct burden on interstate commerce.

2. To affirm the judgment of the Supreme Court of Illinois because it is manifest the writ was taken for delay only, and that the question on which the decision of the cause here depends is so devoid of merit as not to need further argument, having been plainly and repeatedly decided by this court contrary to the position taken in the "Statement of Errors Relied Upon," filed herein by plaintiff in error.

3. If this Honorable Court, upon consideration hereof, refuses to grant either of the foregoing motions, then that the case be transferred for hearing to the summary docket because the case is of such a character as not to justify extended argument.

EVERETT JENNINGS,
M. F. GALLAGHER,
Attorneys for Defendant in Error.

BRIEF OF ARGUMENT IN SUPPORT OF THE FOREGOING MOTIONS.

I.

STATEMENT.

The single question on this record:

Does an order of the Railroad and Warehouse Commission of Illinois fixing a maximum rate between two points in Illinois, for a railroad haul entirely in that state, applicable to traffic only that originates in Illinois, so far encroach upon the power and agencies of the Federal Government to regulate commerce among the states that the order is void?

The Facts.

Poehlmann Bros. Company is an Illinois corporation engaged in the growing and sale of flowers, and has its greenhouses at Morton Grove, Cook County, Illinois. (Trans., page 24.) Morton Grove is a station on the Chicago, Milwaukee & St. Paul Railway, three miles northwest of the corporate limits of Chicago. In its greenhouses, Poehlmann Bros. Company use about 30,000 tons of coal each year and about 500 cars of manure. (Trans., page 15.)

Over 95 per cent. of the coal used by Poehlmann Bros. Company is mined in Illinois (Trans., page 15), and the manure comes from places in and around Chicago. (Trans., page 28.) This freight moves

to Morton Grove via the Chicago, Milwaukee & St. Paul Railway. This carrier receives the cars at Galewood, a station inside of Chicago, where the yards are located on which the cars are transferred to it by other carriers. (Trans., page 27.) The distance from Galewood to Morton Grove, being the entire haul involved in this case, is about 12 miles. (Trans., page 28.) There are no joint through rates on coal to Morton Grove from points in Illinois, or from points in other states. (Trans., pages 11, 16, 27 and 28.) Both on the interstate and intrastate shipments the rate up to Galewood is a separate rate, and the rate from Galewood to Morton Grove is a separate rate. The rates of the carriers hauling the coal to Chicago vary according to point of origin, but in all cases the charge of the Chicago, Milwaukee & St. Paul Railway Company for carrying the coal from Galewood to Morton Grove is 40 cents per ton. This rate of 40 cents a ton is a charge of the Chicago, Milwaukee & St. Paul Railway, published by that carrier, for which it is alone responsible. (Tariff C. M. & St. P. Ry., G. F. D. 2500-B. Transpages 3 and 28.) July 18, 1913, Poehlmann Bros. Company filed a petition with the Railroad and Warehouse Commission of Illinois (predecessor of the present State Public Utilities Commission of Illinois) charging that the rates of 40 cents a ton on coal and on manure from Galewood to Morton Grove were unjust and unreasonable, and after a hearing the Railroad and Warehouse Commission so found, and ordered that rates of 20 cents per ton on coal and 25 cents per ton on manure were just and reasonable rates and should be put into effect by the Chicago, Milwaukee & St. Paul Railroad. (Trans., page 12.)

The complaint and the proceedings before the Railroad and Warehouse Commission were confined to transportation conducted wholly in Illinois, and relief was asked solely as to traffic originating and delivered in Illinois. (See prayer of complaint, Trans., page 5.) The complaint, paragraph 3 (Trans., page 3) shows the distance from Galewood to Morton Grove of 11 miles, and alleges "the said Chicago, Milwaukee & St. Paul Railway Company charges and collects for moving a car of bituminous coal from Galewood to Morton Grove, 40 cents per net ton; and that said carrier charges and collects the charges of 40 cents per ton for moving a car of manure from Galewood to Morton Grove. The complainant further shows that there are no through rates from mines in Illinois to Morton Grove." (Trans., page 3.)

Paragraph 4 of the complaint is as follows:

> "Complainant further shows that a charge of 40 cents per net ton on coal and of 40 cents on manure and other materials, for the service of said Chicago, Milwaukee & St. Paul Railway for moving said cars from Galewood to Morton Grove, is unjust, unreasonable, excessive and discriminatory, and in violation of the provisions of the said Act to establish a Board of Railroad and Warehouse Commissioners and prescribe their duties, approved April 13, 1871, and the acts amendatory thereof and supplemental thereto."

In paragraph 11 of the complaint, it is alleged that the complainant is grievously discriminated against and that the charges of 40 cents a ton on coal and manure made by the Chicago, Milwaukee & St. Paul Railroad are unjust and unrea-

sonable, excessive and discriminatory. (Trans., page 4.)

The order of the Railroad and Warehouse Commission was confined to the movement between Galewood and Morton Grove. The order reads (Trans., page 12):

> "It is therefore ordered, adjudged and decreed by the Commission that the said rate of 40 cents per net ton on coal from Galewood to Morton Grove be, and the same is hereby reduced and fixed at a charge of not to exceed 20 cents per net ton on coal, and not to exceed 25 cents per net ton on manure from Galewood to Morton Grove, and the defendant, Chicago, Milwaukee & St. Paul Railway Company, is hereby directed to cease and desist from making any greater charge than hereinabove specified on movements of coal and manure from Galewood to Morton Grove, the Commission finding that the charge herein made and specified, is a reasonable charge therefor."

It is true, the complainant asked the Railroad and Warehouse Commission to establish *through rates from mines in Illinois to Morton Grove.* This the Commission did not do, but finding that the rate from Galewood to Morton Grove was unreasonable and excessive as charged in the complaint, it reduced that rate to a fair basis. This was in accordance with the general prayer of the complaint "for such other and further order as this Commission may deem just and reasonable in the premises." (Trans., page 5.)

From this order an appeal was taken by the railroad company to the Circuit Court of Sangamon County, State of Illinois, and the order was affirmed by that court. A further appeal was then taken to

the Supreme Court of Illinois, and the judgment of the Circuit Court of Sangamon County, approving the order of the Railroad and Warehouse Commission, was affirmed. Thereafter this writ of error was sued out.

For this case below, see 268 Ill., page 49. See Appendix hereto.

The question of the sufficiency of the evidence on which to base the order is not here for review. That question is not embraced in the specifications of errors, and is no longer open. (*Hedrick* v. *Ry. Co.*, 167 U. S. 673. See also *Merchants Bank* v. *Pennsylvania*, 167 U. S. 461.) Nor is there any basis in the specification of errors or in the evidence for the contention that the maximum rates fixed are confiscatory. It must be assumed here that the order prescribed just and reasonable rates. The sole contention of plaintiff in error is that the order is beyond the jurisdiction of the state.

II.

POINTS AND AUTHORITIES.

I.

THERE IS NO COLOR OF GROUND FOR THE CONTENTION THAT THE ORDER WHOSE VALIDITY IS DRAWN IN QUESTION VIOLATES PARAGRAPH 3 OF SECTION 8 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES, AS STATED IN THE FIRST SPECIFICATION OF ERROR.

All the services of this carrier, performed wholly in Illinois, are amenable to state regulation.

Simpson v. *Shepard* (Minnesota Rate Case), 230 U. S. 352.

Munn v. *Illinois*, 94 U. S. 113.

Wabash Ry. v. *Illinois*, 118 U. S. p. 565.

Chicago, Milwaukee & St. Paul Ry. v. *State of Iowa*, 233 U. S. 334.

Illinois Central Railroad Company v. *Mulberry Hill Coal Co.*, 238 U. S. 275.

Illinois Central R. R. Co. v. *Louisville Railroad Commission*, 236 U. S. page 164.

Missouri Pacific Ry. Co. v. *Larabee Mills*, 211 U. S. 612.

Wilmington Transportation Company v. *California Railroad Commission*, 236 U. S. page 156.

Erie R. R. v. *Purdy*, 185 U. S. at page 148.

Northern Pacific Ry. v. *North Dakota*, 216 U. S. 579.

Minneapolis and St. Louis R. R. Co. v. *Minnesota*, 186 U. S. 257.

Atlantic Coast Line v. *Mazursky*, 216 U. S. 122.

The entire contention of the plaintiff in error in this case as shown by the specifications of error is settled adversely to it by the decision of this court in Minnesota Rate Cases, 230 U. S., pages 396, 412, 413, 414, 415, 420, 421, 431, 432 and 433.

In that case this court said (p. 431):

> "It thus clearly appears that, under the established principles governing state action, the State of Minnesota did not transcend the limits of its authority in prescribing the rates here involved, assuming them to be reasonable intrastate rates. It exercised an authority appropriate to its territorial jurisdiction and not opposed to any action thus far taken by Congress."

It is therefore clear, in the absence of further legislation by Congress at least, that the order here involved was within state authority and in no way encroaches upon the regulative system of the federal government.

No doubt has been entertained as to the authority of the states to regulate rates for transportation wholly intrastate.

Minnesota Rate Cases, *supra*, page 415.

The fact that the order here involved may affect interstate commerce indirectly, does not withdraw it from the "undeniable power of the state."

Minnesota Rate Cases, *supra*, page 426, page 410.

This court is asked in this case to do that, which, after great consideration and deliberation, it declined to do in the *Minnesota Rate Cases, i. e.*, "under the guise of construction to provide a more compre-

hensive scheme of regulation than Congress has decided upon."

Minnesota Rate Case, *supra,* page 433.

In the case last cited, which seems to finally remove from the field of debate the precise question presented in the instant case, this court further said:

> "Congress did not undertake to say that the intrastate rates of interstate carriers should be reasonable or to invest its administrative agency with authority to determine their reasonableness. Neither by the original act nor by its amendment did Congress seek to establish a unified control over interstate and intrastate rates; it did not set up a standard for intrastate rates, or prescribe, or authorize the Commission to prescribe, either maximum or minimum rates for intrastate traffic. It cannot be supposed that Congress sought to accomplish by indirection that which it expressly disclaimed, or attempted to override the accustomed authority of the states without the provisions of a substitute. *On the contrary, the fixing of reasonable rates for intrastate transportation was left where it had been found; that is, with the states and the agencies created by the states to deal with that subject. Missouri Pacific Ry. Co.* v. *Larabee Mills,* 211 U. S. 612, 620, 621."

The order here involved is confined to commerce that begins and ends in Illinois. It fixes a charge for an entirely local haul, the transportation of certain commodities for a distance of eleven and fraction miles all in one county in Illinois. If this order is void because it infringes upon the power of the federal government to regulate commerce then all state authority over rates is extinguished, and there is now no governmental agency that could regulate the charge of the plaintiff in error for this service.

In the case of *Munn* v. *Illinois*, 94 U. S. 113, this court clearly stated the jurisdiction of the states over commerce that begins and ends within a state. There this court said:

> "Of the justice or propriety of the principle which lies at the foundation of the Illinois statute, it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the state, it may be very just and equitable, and it certainly is the province of the state legislature to determine that question."

The order of the state board in this case shows on its face that it applies solely to commerce that is internal, and the order was so interpreted by the Supreme Court of Illinois, and this court has frequently decided that it will give such an order a valid construction if it is susceptible of such construction.

In *Erie Railroad* v. *Purdy*, 185 U. S. at 148, a state statute regulating commerce was attacked because it was a burden upon interstate commerce. This court dismissed the writ of error for want of jurisdiction, saying:

> "But the Court of Appeals held that the statute was intended to apply and applied only to domestic transportation. We accept this view as to the scope and operation of the statute, and assume that it does not require the railroad company to issue mileage kets covering the transportation of passengers from one state to another state. *So that no federal question arising under the commerce clause of the Constitution is here for determination.*"

This court further said in that case:

> "That such a statute, if limited in its scope to transportation wholly within the limits of the state, is a valid exercise of state authority set-

tled by the decision of the Supreme Court of the United States in *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, where it was said: 'It (the state) may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the state.' This doctrine has never been overruled or limited; on the contrary, it is fully recognized in the later cases. *Hennington* v. *Georgia*, 163 U. S. 299; *W. U. Tel. Co.* v. *James*, 162 U. S. 650; *L. S. & M. S. R. Co.* v. *Ohio*, 173 U. S. 285. In *Wabash etc. Ry. Co.* v. *Illinois*, 118 U. S. 557, a statute of Illinois regulating fares was held void solely on the ground that the act, *as interpreted by the Supreme Court of the state*, included cases of transportation partly within and partly without the state. It was there stated: *'If the Illinois statute could be construed to apply exclusively to contracts for a carriage which begins and ends within the state, disconnected from a continuous transportation* through or into other states, there does not seem *to be any difficulty in holding it to be valid.'* There is nothing in the language of the statutes now before us that shows they were intended to affect any but interstate transportation; but if their interpretation is doubtful 'the courts must so construe a statute as to bring it within the constitutional limits, if it is susceptible of such construction.' *Sage* v. *City of Brooklyn*, 89 N. Y. 189; *People* v. *Terry*, 108 N. Y. 1. Within this principle these statutes must be construed as applying to transportation wholly within the state, and as so construed they do not infringe upon the constitution of the United States."

In *Wabash etc. Railway Co.* v. *Illinois*, 118 U. S. p. 565, this court said:

"It has often been held in this court, and there can be no doubt about it, that there is a commerce wholly within the state which is not

subject to the constitutional provision and the distinction between commerce among the states and the other class of commerce between the citizens of a single state, and conducted within its limits exclusively, is one which has been fully recognizes in this court, although it may not be always easy, where the lines of these classes approach each other, to distinguish between the one and the other. *The Daniel Ball,* 10 Wall. 557; *Hall* v. *De Cuir,* 95 U. S. 485; *Telegraph Co.* v. *Texas,* 105 U. S. 460."

The interpretation and effect given by the Supreme Court of Illinois to the order here attacked is as follows (*C. M. & St. P. Ry.* v. *Public Utilities Commission,* 268 Ill., p. 52):

"Neither the complaint nor the order in any way related to or affected inter-state commerce. The complaint was confined to charges on coal shipped to the complainant from points in this State, the recitals of the order related only to such shipments, and the order did not purport to fix a rate on any inter-State shipment. The argument is, that because a car of coal coming to Galewood from another State would be hauled over the same track by the appellant to Morton Grove and the appellant could not discriminate and charge more for hauling that car than for a car coming from a mine in this State, the commission has discriminated against inter-State commerce and placed an unlawful burden upon it,—which is saying that the State has no concern with or control over rates for transportation which is purely local within its borders if the carrier performs similar service in inter-State commerce. We do not understand that to be the law, or that any doubt has ever been entertained of the authority of the State to regulate rates for transportation that is wholly within the State, although the authority of the State does not extend to the regulation of charges for inter-State transportation or to discrimination against inter-State commerce."

So in *Northern Pacific Ry. Co.* v. *North Dakota*, 216 U. S. 579, the holding of the state court that the rates applied only to transportation within the state, was held to remove the case from any possibility of infringement upon the commerce clause.

For a discussion of the case last cited, see *Minnesota Rate Cases*, 230 U. S. p. 430.

If it can be truly said that the case at bar presents a federal question, nevertheless the power of the state to regulate charges of common carriers for a service between two points within the state, is, as stated by this court in the Minnesota Rate Cases, *supra*, "so fully established" so "acknowledged" and "undeniable" that the present contention can well be characterized as plainly devoid of merit and the judgment on motion affirmed.

II.

THE ORDER UNDER CONSIDERATION DOES NOT CONTRAVENE THE ACT TO REGULATE COMMERCE.

The express provision of the Act to Regulate Commerce is that it has no application to transportation "wholly within one state, and not shipped to or from a foreign country, or from or to any state or country aforesaid." Proviso of Section 1.

See:

Missouri Pacific Ry. Co. v. *Larrabee Mills*, 211 U. S. 612, 621.

Minnesota Rate Case, *supra*, page 418.

From the specifications of error it appears that the position taken by the carrier is that this order in fact

operates to regulate interstate commerce, because coal might come from other states and pass over the same rails from Galewood to Morton Grove, and, on the assumption that all coal is competitive, this carrier might be forced by commercial conditions to accord to interstate shippers the same rate for its portion of the haul. It is obvious that if this possibility renders the order void, then state authority over rates is extinguished, for there is no part of a railroad where such a situation could not arise. (Minnesota Rate Case, *supra*, page 395.) But this contention does not go to the validity of the order or the power of the state to promulgate it. It goes to its possible commercial effect, and if the effect of the order in the future is to cause a discrimination against interstate shippers, such shippers will then have the right to complain of such discrimination to the Interstate Commerce Commission. This is the decision of this court in *Houston East and West Railway Co.* v. *United States,* 234 U. S. 342.

There the validity of an order of the Interstate Commerce Commission was attacked on the ground that it exceeded the authority of that commission. The Commission found that the carriers operating in Texas unjustly discriminated against Shreveport, Louisiana, by maintaining rates within the State of Texas lower than the rates to common points from Shreveport. The lower intrastate rates were compelled by an order of the Railroad and Warehouse Commission of Texas. No one in that case claimed that the order of the Texas board was void. This court held that the Interstate Commerce Commis-

sion had the power and jurisdiction to adjudge and remove a discrimination against interstate traffic resulting from intrastate rates. This court said (page 357):

> "Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier and subject to the authority of the states, or of the agencies created by the states. This was the question recently decided by this court in the Minnesota Rate Cases, *supra.*"

There has been no finding here by the Interstate Commerce Commission that the Chicago, Milwaukee & St. Paul Railway Company by maintaining a rate of 20 cents a ton on coal from Galewood to Morton Grove, is discriminating against interstate shippers. If such rates when made effective cause an unjust discrimination within the meaning of the act to Regulate Commerce, it will be for the Commission, not the courts, to find and remove such discrimination.

Houston & Texas Ry. Co. v. *U. S., supra,* pages 357, 358.

There is, of course, nothing to prevent the carrier giving to shippers of coal in other states the same rate on their coal when hauled from Galewood to Morton Grove as the state board has found just and reasonable and prescribed for Illinois coal.

III.

THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN POEHLMANN BROS. COMPANY V. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, 30 I. C. C. REP. 89.

Specification of Error No. 8, filed by the plaintiff in error in this case, refers to the decision of the

Interstate Commerce Commission in a complaint filed by Poehlmann Bros. Company against the Chicago, Milwaukee & St. Paul Railway Company. That case involved rates on coal from Pennsylvania, Maryland, Ohio and Indiana. Although the order of the Interstate Commerce Commission is not in the record of this case, it will be seen by an examination of the reported opinion that the complaint was dismissed because the Chicago, Milwaukee & St. Paul Railway Company was the only party defendant and the Commission held that the traffic involved was through traffic, the Commission saying (30 I. C. C. Rep. at page 92):

> "The rate specifically attacked, although a separately established rate of the delivering line, can not be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Some regard must be had to the measure of the through rate as an entirety, and neither the through rate nor the carriers responsible for it and participating in it are before us in this proceeding.
>
> Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rates under attack, *we must refrain from expressing any conclusion upon the reasonableness of either rate.*"

It will thus be seen that the Interstate Commerce Commission did not pass upon the question as to what is a reasonable rate from Galewood to Morton Grove, either as a separately established charge, or as a factor in a through rate, applicable to the movement of coal from points in other states. There is of course nothing in the decision of the Interstate

Commerce Commission that affects directly or indirectly the validity of the order of the Illinois board now under consideration.

The only adjudication as to what is a just and reasonable rate from Galewood to Morton Grove is the finding and order of the Railroad and Warehouse Commission of Illinois, namely, 20 cents a ton for the carriage of coal and 25 cents a ton for manure. All presumptions should be in favor of that order.

CONCLUSION.

From the foregoing we conclude and respectfully submit:

1. The claim that the order in question is violative of the commerce clause of the federal constitution, or the Act to Regulate Commerce, suggests a fictitious, not a real, federal question.

2. If the alleged question can be considered real and thereby jurisdiction is conferred, then, the point has been so plainly and repeatedly established against the contention of plaintiff in error, that the judgment should be affirmed on motion.

3. At all events, no extended argument being necessary, the case can properly be dealt with on the summary docket.

Respectfully submitted,

EVERETT JENNINGS,
M. F. GALLAGHER,
Attorneys for Defendant in Error.

APPENDIX.

Opinion of the Supreme Court of Illinois in This Case.

Chicago, Milwaukee & St. Paul Railway Company
vs.
State Public Utilities Commission of Illinois *ex rel.* Poehlmann Bros. Company.
} No. 9959.

Cartwright, C. J. The appellant, the Chicago, Milwaukee & St. Paul Railway Company, charges the *Poehlmann Bros. Company*, a corporation owning and operating two greenhouses at Morton Grove, a village about three miles from the corporate limits of Chicago, 40 cents a ton on carload shipments of coal and 40 cents a ton on carload shipments of manure from Galewood to Morton Grove, a distance of 11½ miles. The Poehlmann Bros. Company filed a complaint with the Railroad and Warehouse Commission, of which the appellee, the State Public Utilities Commission, is the successor, alleging that it was in the business of growing flowers and selling them in Chicago and Morton Grove; that it consumed in the operation of its business about 28,000 tons of bituminous coal per year, a large portion of which was shipped from points in this state, and used about 700 cars of manure each year; that Galewood is a station on the appellant's railroad; and that it made the charges stated from its station of Galewood, where it received cars from other common carriers to Morton Grove. The complainant alleged that the charge was unjust, unreasonable and excessive, and was

discriminatory in relation to charges made for similar service to competitors of the complainant requiring substantially the same service at other points near Chicago, and prayed for an order of the Commission ascertaining and determining reasonable and lawful through rates and charges for transportation of coal from the mines in this state and ordering the appellant to conform thereto, and for such other and further order as the Commission might deem just and reasonable in the premises. The appellant filed an answer denying that the charges of 40 cents per net ton for transporting coal, manure and other materials from Galewood to Morton Grove was unjust, unreasonable, excessive, or discriminatory. After a hearing of the parties and a consideration of the evidence produced, the Commission made an order reciting that complainant had asked for the establishment of through rates, but the only rate attacked was the charge from Galewood to Morton Grove, and the Commission did not feel it necessary to enter, or that it would be justified in entering into the question of through rates or discrimination, believing that the matter could be properly disposed of without entering into those questions. It was ordered that the charge of 40 cents per net ton was unreasonable, and that the rate should be reduced and the charges should not exceed 20 cents per ton on coal and 25 cents per ton on manure from Galewood to Morton Grove. The appellant removed the case by appeal to the Circuit Court of Sangamon County, where the order was affirmed, and a further appeal was prosecuted to this court.

(1) The first proposition of counsel for the ap-

pellant is that, so far as the rate on coal was concerned, the order was outside the scope of the prayer of the complainant, which asked the Commission to establish through rates on coal from the mines in Illinois to complainant's plant at Morton Grove and to establish a reasonable rate for moving manure from Galewood station to Morton Grove, and the Commission did not establish any through rate on coal, but, ignoring the prayer, merely fixed a local rate. There was a prayer for specific relief by the establishment of through rates from the mines to Morton Grove, but the reasonableness of the rate from Galewood to Morton Grove was directly attacked in the complaint as being unjust, unreasonable, and excessive and there was no other fact alleged calling for relief. There was a general prayer for such other and further order as the Commission might deem just and reasonable in the premises, and what the Commission was asked or authorized to do depended rather upon the facts alleged than upon the form of the prayer. The appellant appeared and defended before the Commission, and the only controversy was whether the rate from Galewood to Morton Grove was unreasonable, excessive or discriminatory as between the complainant and its competitors. The Commission found that it was not necessary to enter into the question of discrimination or to establish through rates, and the general prayer based upon the facts alleged was sufficient to authorize the relief granted.

(2, 3) The next proposition of counsel is that the order discriminates against and places a burden upon interstate commerce in violation of the commerce clause of the Federal Constitution, and is

therefore unreasonable, unlawful and void. Neither the complaint nor the order in any way related to or affected interstate commerce. The complaint was confined to charges on coal shipped to the complainant from points in this state, the recitals of the order related only to such shipments, and the order did not purport to fix a rate on any interstate shipment. The argument is that because a car of coal coming to Galewood from another state would be haul over the same track by the appellant to Morton Grove, and the appellant could not discriminate and charge more for hauling that car than for a car coming from a mine in this state, the Commission has discriminated against interstate commerce and placed an unlawful burden upon it—which is saying that the state has no concern with or control over rates for transportation which is purely local within its borders if the carrier performs similar service in interstate commerce. We do not understand that to be the law, or that any doubt has ever been entertained of the authority of the state to regulate rates for transportation that is wholly within the state, although the authority of the state does not extend to the regulation of charges for interstate transportation or to discrimination against interstate commerce. *Wabash, St. Louis & Pacific Railway Co.* v. *Illinois*, 118 U. S. 557, 7 Sup. Ct. 4, 30 L. Ed. 244.

In the case of *Simpson* v. *Shepard*, 230 U. S. 352, 33 Sup. Ct. 729, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151 (known as the "Minnesota rate cases"), the court entered into an exhaustive discussion of the relative jurisdiction of the state and national governments over the subject of transportation, intrastate and interstate, with a complete review of the

authorities, and again affirmed the doctrine that the power of the Federal Government to regulate transportation is limited to interstate commerce, and the authority of the states to regulate transportation which begins and ends within their borders has been in no wise restricted by the Federal act. The court said that the doctrine was fully established by its decisions that the state could not prescribe interstate rates, but could fix reasonable interstate rates throughout its territory, and that the decisions recognizing and defining the state power wholly refuted the contention that the making of such rates either makes a direct burden upon interstate commerce or is repugnant to the Federal Constitution. The court said:

"Congress did not undertake to say that the intrastate rates of interstate carriers should be reasonable, or to invest its administrative agency with authority to determine their reasonableness. Neither by the original act nor by its amendment did Congress seek to establish a unified control over interstate and intrastate rates. It did not set up a standard for intrastate rates, or prescribe, or authorize the Commission to prescribe, either maximum or minimum rates for intrastate traffic. It can not be supposed that Congress sought to accomplish by indirection that which it expressly disclaimed, or attempted to overrule the acustomed authority of the states without the provision of a substitute. On the contrary, the fixing of reasonable rates for interstate transportation was left where it had been found; that is, with the states and the agencies created by the states to deal with that subject. *Missouri Pacific*

Railway Co. v. *Larabee Mills,* 211 U. S. 612, 621 (29 Sup. Ct. 214, 53 L. Ed. 352.)"

If counsel for appellant are right in their claim that the order was void because a car of coal or of manure might come over its road from another state, the state would have no power in any case to regulate transportation wholly within its boundaries, as there is no railroad where such a condition does not exist. No such doctrine has been declared or indorsed in any case to which counsel have referred. It is true that if, by reason of the interblending of the interstate and intrastate operations of interstate carriers, adequate regulation of interstate rates cannot be maintained without affecting intrastate rates, Congress is entitled to determine what regulation shall be applied. Such a situation was suggested in *Simpson* v. *Shepard, supra,* and was brought before the court in *Houston East & West Texas Railway Co.* v. *United States,* 234 U. S. 342, Sup. Ct. 833, 58 L. Ed. 1341. In that case the railroad companies had made rates discrinminating in favor of traffic within the State of Texas and against similar traffic between Louisiana and Texas. The Interstate Commerce Commission had found the interstate rates to be unreasonable and had established rates substantially the same as those charged by the carriers for transportation for similar distances in Texas. The Commerce Court dismissed the petitions of the railroad companies to set aside the order, and the Supreme Court affirmed the decree, holding that Congress has the power to prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations, to the

injury of interstate commerce. That principle has no possible application to this case upon the argument of counsel that the rate from Galewood to Morton Grove must in all cases be the same, so that a lower rate will not be charged on intrastate commerce than is charged for interstate commerce. There is in the order no feature of discrimination against interstate commerce.

In *Mulberry Hill Coal Co.* v. *Illinois Central Railroad Co.*, 257 Ill. 80, 100 N. E. 151, the coal company brought the suit for damages for failure to comply with the statute requiring the railroad company to furnish cars within a reasonable time for the transportation of coal. It was agreed at the trial that part of the coal would have been shipped out of the state and part would have been consigned locally to points within the state. The railroad company claimed that the act was void, because repugnant to the commerce clause of the Constitution, and moved the court, at the close of all the evidence, to dismiss the suit. Whether the court erred in refusing to dismiss the suit on the ground that the state had lost all right to require the performance of any duty in intrastate commerce, because the railroad company had extended its line beyond the limits of the state, was the only question involved in the appeal. Our opinion was that the laws of the state governing the duties of railroad companies to furnish cars for transportation of property within the state were not abrogated by an extension of the railroad beyond the limits of the state and the federal control over the interstate commerce carried on over the road. If all power was not so abrogated, then the act was not

void, and the only question concerning interstate commerce related to the measure of damages. A recovery could only have been had for a failure to furnish cars for intrastate transportation, and no damages could be included for a failure to furnish cars for interstate transportation; but the question of the measure of damages was not raised, and the only question presented or argued was whether the state had lost all control over common carriers who did both an intrastate and interstate business.

(4) Counsel for appellant say that the same complaint was made by the Poehlmann Bros. Company to the Interstate Commerce Commission, which upheld the 40-cent rate and dismissed the complaint, and a copy of the opinion of that Commission is included in the argument. Counsel are evidently mistaken. The Poehlmann Bros. Company represented to the Interstate Commerce Commission that a part of the coal used by it came from West Virginia and other sections outside of this state, and complained that the local rate of 40 cents from Galewood to Morton Grove was unreasonable. The appellant was the only party defendant, and the Commission said that the comparisons made by the complainant were in respect to through rates; that the traffic in question was through traffic, although the rate between Galewood and Morton Grove was separately established; and that such a rate could not be considered apart from its relationship to the through rate from interstate points of origin. Neither the through rate nor the carriers responsible for it were before the Commission, and therefore it declined to express any opinion upon the reasonableness of the rate, and did not uphold it or decide anything about it.

(5) It is contended that the order is void because of a failure to give notice to appellant, since the only notice received was that there would be a hearing on the complaint which prayed for the establishment of through rates. The appellant appeared at the hearing, offered such evidence as it chose in support of its answer, and against the allegation that the rate was unreasonable, and, as we have already said, the prayer was not limited to the fixing of through rates.

(6) It is next urged that the order is void, because in conflict with the act forbidding the Commission to enter an order giving one carrier an unfair or unequal advantage over another. The evidence does not tend to show that any advantage was given. Counsel also say that the evidence did not show any discrimination in rates against the petitioner, but that question was not decided by the Commission. In the order the Commission expressly refused to enter upon that question, and merely decided that the rate was unreasonable.

(7) Finally, it is contended that the conclusion of the Commission that the rate was unreasonable was not justified by the evidence. The power to fix rates is legislative, whether exercised by the Legislature directly, or by an administrative body under delegated authority. The fixing of rates is not a judicial function, and the right to review the conclusion of the Legislature or an administrative body is limited to determining whether the board acted within the scope of its authority or the order is without foundation in the evidence, or a constitutional right of the carrier has been infringed upon by fixing

rates which are confiscatory or insufficient to pay the cost of the traffic and return to the carrier a reasonable profit on the investment. *Interstate Commerce Commission* v. *Illinois Central Railroad Co.*, 214 U. S. 452, 30 Sup. Ct. 155, 55 L. Ed. 280; *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Railway Co.*, 218 U. S. 88, 30 Sup. Ct. 651, 54 L. Ed. 946. In this case the Commission acted within the scope of its authority, and the evidence shows that the rate was out of proportion to the rates fixed by the appellant over the same line to Milwaukee—a distance seven times as great as from Galewood to Morton Grove. The order had a substantial basis in the evidence, and there is no ground upon which the court could interfere with the judgment of the Commission.

The judgment is affirmed.

JUDGMENT AFFIRMED.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1915.

No. 148

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS, ex rel., POEHLMANN BROS. CO.,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Brief for Defendant in Error.

M. F. GALLAGHER,
COUNSEL FOR DEFENDANT IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1915.

No. 495.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS, ex rel., POEHLMANN BROS. CO.,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

There is here for review a judgment of the Supreme Court of the State of Illinois, affirming an order of the Board of Railroad & Warehouse Commissioners which prescribed maximum railroad rates between two points in Illinois. (For this case below, see 268 Ill. 49.) The opinion of the Supreme Court of Illinois is printed as an Appendix to the motion heretofore filed by this defendant in error to dismiss, or affirm, or transfer to summary docket.

The order of the Railroad and Warehouse Commission of Illinois was entered on October 25, 1913. (See Trans., pp. 10, 11, 12.) Thereafter, and on January 1, 1914, the Board of Railroad and Warehouse Commissioners was superseded by the State Public Utilities Commission of Illinois by virtue of the statute entitled an "Act to Provide for the Regulation of Public Utilities," approved June 30, 1913, in force January 1, 1914. (Hurd's Revised Statutes of Illinois for 1915-1916, p. 2016.)

This statute requires the State Public Utilities Commission to enforce the findings, orders and decisions of the Board of Railroad and Warehouse Commissioners previously made. (See Section 82.) The statute creating the Board of Railroad and Warehouse Commissioners and prescribing its powers and duties, in force at the time of the entry of the order here involved, may be found in "Laws of Illinois, Forty-seventh General Assembly," page 471. The sections of this statute referring to the powers and duties of the Board of Railroad and Warehouse Commissioners is herewith printed as an Appendix.

The salient facts of the case are as follows:

Poehlmann Bros. Company is an Illinois corporation engaged in the growing and sale of flowers, and has its greenhouses at Morton Grove, Cook County, Illinois. (Trans., page 24.) Morton Grove is a station on the Chicago, Milwaukee & St. Paul Railway, three miles northwest of the corporate limits of Chicago. In its greenhouses, Poehlmann Bros. Company burn about 30,000 tons of coal each year and use about 500 cars of manure. (Trans., page 15.)

Over 95 per cent. of the coal used by Poehlmann Bros. Company is mined in Illinois (Trans., page 15), and the manure comes chiefly from the stockyards in Chicago. (Trans., page 28.) This freight all moves in carloads to Morton Grove via the Chicago, Milwaukee & St. Paul Railway, which receives the cars at Galewood, a junction station inside of Chicago, where the cars are transferred to it by other carriers. (Trans., page 27.) The distance from Galewood to Morton Grove, being the entire haul involved in this case, is about 12 miles. (Trans., page 28.) There are no joint through rates on coal to Morton Grove from points in Illinois, or from points in other states. (Trans., pages 11, 16, 27 and 28.) Both on the interstate and intrastate shipments the rate up to Galewood is a separate rate, and the rate from Galewood to Morton Grove is a separate rate. The rates of the carriers hauling the coal to Chicago vary according to point of origin, but in all cases the charge of the Chicago, Milwaukee & St. Paul Railway Company for carrying the coal from Galewood to Morton Grove is 40 cents per ton. This rate of 40 cents a ton is a charge of the Chicago, Milwaukee & St. Paul Railway, published by that carrier, for which it is alone responsible. (Tariff C. M. & St. P. Ry., G. F. D. 2500-B. Trans., pages 3 and 28.)

July 18, 1913, Poehlmann Bros. Company filed a petition with the Railroad and Warehouse Commission charging that the rates of 40 cents a ton on coal and on manure from Galewood to Morton Grove were unjust and unreasonable, and after a hearing the Railroad and Warehouse Commission so found, and ordered that rates of 20 cents per ton on coal

and 25 cents per ton on manure were just and reasonable maximum rates to be charged for this service by the Chicago, Milwaukee & St. Paul Railroad. (Trans., page 12.)

The complaint and the proceedings before the Railroad and Warehouse Commission were confined to transportation conducted wholly in Illinois, and relief was asked solely as to traffic originating and delivered in Illinois. (See prayer of complaint, Trans., page 5.) The complaint, paragraph 3 (Trans., page 3) shows the distance from Galewood to Morton Grove of 11 miles, and alleges "the said Chicago, Milwaukee & St. Paul Railway Company charges and collects for moving a car of bituminous coal from Galewood to Morton Grove, 40 cents per net ton; and that said carrier charges and collects the charges of 40 cents per ton for moving a car of manure from Galewood to Morton Grove. The complainant further shows that there are no through rates from mines in Illinois to Morton Grove." (Trans., page 3.)

Complaint further stated that the complainant often protested against the rate of 40 cents a ton, but its protests were unavailing. (Trans., 5.)

Paragraph 4 of the complaint is as follows:

> "Complainant further shows that a charge of 40 cents per net ton on coal and of 40 cents on manure and other materials, for the service of said Chicago, Milwaukee & St. Paul Railway for moving said cars from Galewood to Morton Grove, is unjust, unreasonable, excessive and discriminatory, and in violation of the provisions of the said Act to establish a Board of Railroad and Warehouse Commissioners and prescribe their duties, approved April 13, 1871,

and the acts amendatory thereof and supplemental thereto."

In paragraph 11 of the complaint, it is alleged that the complainant is grievously discriminated against and that the charges of 40 cents a ton on coal and manure made by the Chicago, Milwaukee & St. Paul Railroad are unjust and unreasonable, excessive and discriminatory. (Trans., page 4.)

At the hearing before the State Commission evidence was introduced both by the petitioner and the railroad company. The petitioner attacked the reasonableness of the 40-cent rate which was a traffic proposition in and of itself. (Trans., 29.)

The rates of 40 cents a ton on coal and manure were shown to be unreasonably high by a comparison with a great number of other rates for hauls of similar distances published by this carrier and other carriers in and around Chicago. (Trans., 31 to 40.) The rate of 40 cents was particularly compared with the rate from Galewood station to Edgewater, through a more congested part of Cook County, for practically the same distance, which was 20 cents a ton. This rate of 20 cents a ton from Galewood to Edgewater was published and maintained by the Chicago, Milwaukee & St. Paul Railroad. (Trans., 45.) The carrier made practically no defense on the merits. (See Trans., pp. 40, 41, 42.)

The finding of the Railroad and Warehouse Commissioners was as follows:

> "After a careful investigation of the rates charged by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to other stations on its lines of road in the vicinity

> of Morton Grove, and also an investigation of the rates charged by other defendant roads in that locality, for similar distance, when compared with the charge made by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove, the Commission believes that said charge of 40 cents per net ton to be an unreasonable charge." (Trans., page 12.)

The order of the State Commission was confined to the movement between Galewood and Morton Grove. The order reads (Trans., page 12):

> "It is therefore ordered, adjudged and decreed by the Commission that the said rate of 40 cents per net ton on coal from Galewood to Morton Grove be, and the same is hereby reduced and fixed at a charge of not to exceed 20 cents per net ton on coal, and not to exceed 25 cents per net ton on manure from Galewood to Morton Grove, and the defendant, Chicago, Milwaukee & St. Paul Railway Company, is hereby directed to cease and desist from making any greater charge than hereinabove specified on movements of coal and manure from Galewood to Morton Grove, the Commission finding that the charge herein made and specified, is a reasonable charge therefor."

It is true, the complainant asked the Railroad and Warehouse Commission to establish *through rates from mines in Illinois to Morton Grove.* This the Commission did not do, but finding that the rate from Galewood to Morton Grove was a separately established and maintained rate of the Chicago, Milwaukee & St. Paul Railway, and was unreasonable and excessive as charged in the complaint, it reduced that rate to a fair basis. This was in accordance with the general prayer of the complaint "for such other and further order as this Commission may

deem just and reasonable in the premises." (Trans., page 5.)

From this order an appeal was taken by the railroad company to the Circuit Court of Sangamon County, State of Illinois, and the order was affirmed by that court. A further appeal was then taken to the Supreme Court of Illinois, and the judgment of the Circuit Court of Sangamon County was affirmed. Thereafter this writ of error was sued out.

An analysis of the specifications of error filed by the plaintiff in error (Trans., pp. 49, 50, 51), will show that the sole question raised by the record is as follows:

Does an order of the Railroad and Warehouse Commission of Illinois fixing a maximum rate between two points in Illinois, for a railroad haul entirely in that state, applicable to traffic only that originates in Illinois, so far encroach upon the power and agencies of the Federal Government to regulate commerce among the states that the order is void?

POINTS AND AUTHORITIES.

I.

THERE IS NO COLOR OF GROUND FOR THE CONTENTION THAT THE ORDER WHOSE VALIDITY IS DRAWN IN QUESTION VIOLATES PARAGRAPH 3 OF SECTION 8 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES, AS STATED IN THE FIRST SPECIFICATION OF ERROR. ALL THE SERVICES OF THIS CARRIER, PERFORMED WHOLLY IN ILLINOIS, ARE AMENABLE TO STATE REGULATION.

Simpson v. *Shepard* (Minnesota Rate Cases, 230 U. S. 352.

Munn v. *Illinois*, 94 U. S. 113.

Wabash Ry. v. *Illinois*, 118 U. S. 557; 565.

Oregon Railroad & Navigation Co. v. *Campbell et al.*, 230 U. S. 525.

Louisville & Nashville R. R. Co. v. *Garrett*, 231 U. S. 298; 310.

Waters-Pierce Oil Company v. *Texas*, 177 U. S. 28.

Chesapeake & Ohio Railway Company v. *Kentucky*, 179 U. S. 388.

Chicago, Milwaukee & St. Paul Ry. v. *State of Iowa*, 233 U. S. 334.

Illinois Central Railroad Company v. *Mulberry Hill Coal Co.*, 238 U. S. 275.

Illinois Central R. R. Co. v. *Fuentes et al.*, 236 U. S. 157; 164.

Missouri Pacific Ry. Co. v. *Larabee Flour Mills Company*, 211 U. S. 612.

Wilmington Transportation Company v. *California Railroad Commission*, 236 U. S. 151; 156.

Erie R. R. v. *Purdy*, 185 U. S. 148.
Northern Pacific Ry. v. *North Dakota*, 216 U. S. 579.
Minneapolis and St. Lauis R. R. Co. v. *Minnesota*, 186 U. S. 257.
Atlantic Coast Line v. *Mazursky*, 216 U. S. 122.
Judson on Interstate Commerce, 3d Ed., Sec. 123.

II.

THIS COURT WILL ACCEPT THE CONSTRUCTION OF THE ORDER BY THE SUPREME COURT OF ILLINOIS WHICH CONFINED ITS OPERATIONS AND EFFECT STRICTLY TO A TRANSPORTATION SERVICE PERFORMED WHOLLY IN THAT STATE.

Waters-Pierce Coal Co. v. *Texas*, 177 U. S. 28.
Chesapeake & Ohio Ry. Co. v. *Kentucky*, 179 U. S. 388.
Erie R. R. Co. v. *Purdy*, 185 U. S. 148.
Northern Pacific Ry. Co. v. *North Dakota*, 216 U. S. 579.

III.

THERE IS NO SPECIFICATION OF ERROR RAISING THE QUESTION OF THE SUFFICIENCY OF THE EVIDENCE ON WHICH TO BASE THE ORDER PRESCRIBING THE MAXIMUM RATES. IF THAT QUESTION WAS EMBRACED IN THE SPECIFICATIONS OF ERROR THE SUFFICIENCY OF THE EVIDENCE IS NOT OPEN FOR REVIEW UPON THIS WRIT OF ERROR.

Hedrick v. *A. T., etc., Ry. Co.*, 167 U. S. 673.
Merchants' Bank v. *Pennsylvania*, 167 U. S. 461.

Klinger v. *Missouri*, 13 Wallace 257; 263.

Atchison Railroad Co. v. *Matthews*, 174 U. S. 96; 97.

Chrisman v. *Miller*, 197 U. S. 313.

King v. *West Virginia*, 216 U. S. 92.

Clipper Mining Co. v. *Eli Mining & Land Co.*, 194 U. S. 220.

IV.

THIS COURT WILL ACCEPT THE DECISION OF THE SUPREME COURT OF ILLINOIS AS CONCLUSIVE AS TO ALL QUESTIONS OF LOCAL LAW AND AS TO THE POWERS OF THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS AND AS TO THE REGULARITY OF THE PROCEDURE BEFORE THAT BOARD.

Klinger v. *Missouri*, 13 Wallace (U. S.) 257; 263.

Tripp v. *Santa Rosa Street Railroad Co.*, 144 U. S. 126.

Seneca Nation v. *Christy*, 162 U. S. 283.

Gulf C. & S. F. R. Co. v. *Texas*, 204 U. S. 403.

Siler v. *L. & N. R. R. Co.*, 213 U. S. 175.

Klinger v. *State of Missouri*, 13 Wall. 257.

Rankin v. *Emigh*, 218 U. S. 27.

Chrisman v. *Miller*, 197 U. S. 313.

King v. *West Virginia*, 216 U. S. 92.

Clipper Mining Co. v. *Eli Mining and Land Co.*, 194 U. S. 220.

Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 86.

V.

THERE IS NO FOUNDATION IN THE SPECIFICATIONS OF ERROR OR IN THE RECORD FOR A CONTENTION AT BAR THAT THE RATES FIXED BY THE STATE COMMISSION ARE CONFISCATORY. (STATEMENT OF ERRORS RELIED UPON, TRANS., PAGE 49.) WHERE A CARRIER CLAIMS THAT A RATE FIXED BY A COMMISSION RESULTS IN CONFISCATION OF PROPERTY UNDER THE GUISE OF REGULATION, A GRAVE QUESTION OF FACT IS RAISED AND THE BURDEN IS UPON THE CARRIER TO CLEARLY SHOW ALL THE FACTS NECESSARY TO SATISFY THE MIND OF THE COURT THAT THE CHARGE FIXED IS SO LOW AS TO BE CONFISCATORY. THERE IS A TOTAL ABSENCE OF EVIDENCE IN THIS RECORD TO SUPPORT SUCH A CONCLUSION.

Atlantic Coast Line v. *Florida*, 203 U. S. 256.

Judson on Interstate Commerce, 3d Ed., Sec. 133.

Seaboard Air Line v. *Florida*, 203 U. S. 261.

Northern Pacific v. *North Dakota*, 216 U. S. 579.

Wood v. *Vandalia Railroad Co.*, 231 U. S. 1.

L. & N. R. R. Co. v. *Garrett et al.*, 231 U. S. 298.

L. & N. R. R. v. *Finn et al.*, 235 U. S. 601.

VI.

RATES FIXED BY STATE AUTHORITY ARE PRESUMED TO BE REASONABLE AND JUST.

Cases cited under Point V, *supra*.

VII.

THE REASONABLENESS OF INTRASTATE RATES IS A MATTER WITHIN THE PROVINCE OF THE STATE COMMISSION AND THE COURT WILL NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE COMMISSION AS TO WHAT IS A FAIR RATE.

Minnesota Rate Cases, 230 U. S. 352; 433, and cases there cited.

ARGUMENT.

I.

THE ORDER OF THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS HERE INVOLVED FIXES A MAXIMUM RATE BETWEEN TWO POINTS IN ILLINOIS, FOR A RAILROAD HAUL ENTIRELY IN THAT STATE, APPLICABLE TO TRAFFIC ONLY THAT ORIGINATES IN ILLINOIS, AND SUCH ORDER, THEREFORE, DOES NOT ENCROACH UPON THE POWER AND AGENCIES OF THE FEDERAL GOVERNMENT TO REGULATE COMMERCE AMONG THE STATES.

The foregoing is the only proposition of law for argument upon this record, and the contention of the plaintiff in error in respect thereto has been recently, after great consideration, settled adversely to it by the decision of this court in *Minnesota Rate* Cases, 230 U. S., pp. 352, 396, 412, 413, 414, 415, 421, 431, 432 and 433, and by the decisions in *Oregon R. R. and Navigation Co.* v. *Campbell*, 230 U. S. 525, and *L. and N.* v. *Garrett*, 231 U. S. 298, 319.

The order attacked does not burden, regulate or unduly discriminate against interstate commerce.

The interpretation and effect given by the Supreme Court of Illinois to the order is as follows (*C. M. & St. P. Ry.* v. *Public Utilities Commission*, 268 Ill., 49, 52):

> "* * * Neither the complaint nor the order in any way related to or affected inter-State commerce. The complaint was confined to charges on coal shipped to the complainant from points in this State,

the recitals of the order related only to such shipments, and the order did not purport to fix a rate on any inter-State shipment. The argument is, that because a car of coal coming to Galewood from another State would be hauled over the same track by the appellant to Morton Grove and the appellant could not discriminate and charge more for hauling that car than for a car coming from a mine in this State, the commission has discriminated against inter-State commerce and placed an unlawful burden upon it,—which is saying that the State has no concern with or control over rates for transportation which is purely local within its borders if the carrier performs similar service in inter-State commerce. We do not understand that to be the law, or that any doubt has ever been entertained of the authority of the State to regulate rates for transportation that is wholly within the State, although the authority of the State does not extend to the regulation of charges for inter-State transportation or to discrimination against inter-State commerce * * *."

The Supreme Court of Illinois having decided and declared that the order involved in this case relates to and is intended to relate only to transportation which begins and ends and moves entirely in Illinois, this court will accept such construction and delimitation of the order.

Waters-Pierce Coal Company v. *Texas*, 177 U. S. 28.

In *Chesapeake & Ohio Railway Company* v. *Kentucky*, 179 U. S. 388, the Court of Appeals of Kentucky construed the separate coach law of that state and declared the same operative only within the state and applicable only to domestic commerce, and this court accepted that construction and held therefore

that the statute did not infringe upon the exclusive power of Congress to regulate interstate commerce.

To the same effect, see *Tullis* v. *Lake Erie & Western R. R.*, 175 U. S. 348, 353.

In *Erie Railroad* v. *Purdy*, 185 U. S. 148, a state statute regulating commerce was attacked because it was a burden upon interstate commerce. This court dismissed the writ of error for want of jurisdiction, saying (p. 152):

> "* * * But the Court of Appeals held that the statute was intended to apply and applied only to domestic transportation. We accept this view as to the scope and operation of the statute, and assume that it does not require the railroad company to issue mileage tickets covering the transportation of passengers from one state to another state. *So that no federal question arising under the commerce clause of the Constitution is here for determination.*"

This court further said in that case (p. 150):

> "* * * That such a statute, if limited in its scope to transportation wholly within the limits of the state, is a valid exercise of state authority settled by the decision of the Supreme Court of the United States in *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, where it was said: 'It (the state) may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the state.' This doctrine has never been overruled or limited; on the contrary, it is fully recognized in the later cases. *Hennington* v *Georgia*, 163 U. S. 299; *W. U. Tel. Co.* v. *James*, 162 U. S. 650; *L. S. & M. S. R. Co.* v. *Ohio*, 173 U. S. 285. In *Wabash etc. Ry. Co.* v. *Illinois*, 118 U. S. 557, a statute of Illinois regulating fares was held void solely on the ground that the act, *as interpreted by the Supreme Court of the state*, included cases of transportation partly

within and partly without the state. It was there stated: *'If the Illinois statute could be construed to apply exclusively to contracts for a carriage which begins and ends within the state, disconnected from a continuous transportation* through or into other states, there does not seem *to be any difficulty in holding it to be valid.'* There is nothing in the language of the statutes now before us that shows they were intended to affect any but interstate transportation; but if their interpretation is doubtful 'the courts must so construe a statute as to bring it within the constitutional limits, if it is susceptible of such construction.' *Sage* v. *City of Brooklyn*, 89 N. Y. 189; *People* v. *Terry*, 108 N. Y. 1. Within this principle these statutes must be construed as applying to transportation wholly within the state, and as so construed they do not infringe upon the constitution of the United States."

In *Northern Pacific Ry. Co.* v. *North Dakota*, 216 U. S. 579, the holding of the state court that the rates applied only to transportation within the state, was held to remove the case from any possibility of infringement upon the commerce clause.

It is clear and indisputable that the order here involved is confined to commerce that begins and ends in Illinois. It fixes a charge for an entirely local haul, the transportation of certain commodities for a distance of eleven and fraction miles all in one county in Illinois. If this order is void because it infringes upon the power of the federal government to regulate commerce, then all state authority over rates is extinguished, and there is now no governmental agency that could regulate the charge of the plaintiff in error for this service.

As the order here attacked prescribes rates for a

railroad transportation entirely within the state, its validity is unquestionable.

In the *Minnesota Rate Cases*, 230 U. S. 352, this court expresses its conclusion after great deliberation and exhaustive analysis of previous decisions, as follows (p. 420):

> "Having regard to the terms of the Federal Statute, the familiar range of state action at the time it was enacted, the continued exercise of state authority in the same manner and to the same extent after its enactment, and the decisions of this court recognizing and upholding this authority, we find no foundation for the proposition that the Act to Regulate Commerce contemplated interference therewith." * * *

The court further said (p. 431):

> "* * * It thus clearly appears that, under the established principles governing state action, the State of Minnesota did not transcend the limits of its authority in prescribing the rates here involved, assuming them to be reasonable intrastate rates. It exercised an authority appropriate to its territorial jurisdiction and not opposed to any action thus far taken by Congress."

It is therefore now the law that the order here involved was within state authority and in no way encroaches upon the present regulative system of the Federal Government.

No doubt has been entertained as to the authority of the states to regulate rates for transportation wholly intrastate.

Minnesota Rate Cases, *supra*, page 415.

The fact that the order here involved through the consequences of competition under interstate rates

may affect interstate commerce indirectly, does not withdraw it from the "undeniable power of the state."

Minnesota Rate Cases, *supra*, page 426, page 410.

This court is asked in this case to do that, which, after great consideration it declined to do in the *Minnesota Rate Case, i. e.*, "under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon."

Minnesota Rate Case, *supra*, page 433.

In the case last cited, which seems to finally remove from the field of debate the precise question presented in the instant case, this court further said (p. 420):

> "Congress did not undertake to say that the intrastate rates of interstate carriers should be reasonable or to invest its administrative agency with authority to determine their reasonableness. Neither by the original act nor by its amendment did Congress seek to establish a unified control over interstate and intrastate rates; it did not set up a standard for intrastate rates, or prescribe, or authorize the Commission to prescribe, either maximum or minimum rates for intrastate traffic. It cannot be supposed that Congress sought to accomplish by indirection that which it expressly disclaimed, or attempted to override the accustomed authority of the states without the provisions of a substitute. *On the contrary, the fixing of reasonable rates for intrastate transportation was left where it had been found; that is, with the states and the agencies created by the states to deal with that subject. Missouri Pacific Ry. Co.* v. *Larabee Mills*, 211 U. S. 612, 620, 621."

The power of the state in the exercise of which

this order was promulgated has never been doubted by this court. At page 412 of the same opinion this court said:

> "State regulation of railroad rates began with railroad transportation. * * * (P. 416.) The doctrine was thus fully established that the state could not prescribe interstate rates but could fix reasonable intrastate rates throughout this territory. The extension of railroad facilities has been accompanied at every step by the assertion of this authority on the part of the states, and its invariable recognition by this court."

The state power of regulation is co-extensive with state boundaries and embraces all points within the state. The contentions of counsel in the Minnesota Rate case made it necessary for this court to thus clearly define the scope of the state power (page 417):

> "Similarly, the authority of the state to prescribe what shall be reasonable charges of common carriers for intrastate transportation, unless it be limited by the exertion of the constitutional power of Congress, is state-wide. As a power appropriate to the territorial jurisdiction of the state, it is not confined to a part of the state, but extends throughout the state—to its cities adjacent to its boundaries as well as to those in the interior of the state. To say that this power exists, but that it may be exercised only in prescribing rates that are on an equal or higher basis than those that are fixed by the carrier for interstate transportation, is to maintain the power in name while denying it in fact. It is to assert that the exercise of the legislative judgment in determining what shall be the carrier's charge for the intrastate service is itself subject to the carirer's will. But this state-wide authority controls the carrier and is not controlled by it; and the idea that the power

> of the state to fix reasonable rates for its internal traffic is limited by the mere action of the carrier in laying an interstate rate to places across the state's border, is foreign to our jurisprudence."

On the appeal of the case of *Ames* v. *Union Pacific Railway Co.*, "it was argued" said this court in its opinion in the *Minnesota Rate Case* (p. 426)

> "that the local traffic was carried over the same tracks, in the same trains and often in the same cars with the interstate traffic; that to separate the cost of carrying the one sort of traffic from that of the other was a 'manifest impossibility'; and that it was a necessary consequence of existing conditions that, if Nebraska controlled the local rates, it at the same time controlled the interstate rates. But this contention was not sustained and the affirmance of the decree was placed upon the distinct ground that the rates were confiscatory."

Another decision of this court precisely in point is *Oregon R. R. & Navigation Co.* v. *Campbell*, 230 U. S. 525. In that case the Railroad Commission of Oregon prescribed maximum freight rates between Portland and other points in Oregon on the line of the Oregon Railroad & Navigation Company. In affirming the validity of the order this court said (p. 535):

> "It is insisted that the order applied to interstate traffic, that is, to traffic originating outside the state and still moving, on its transportation from Portland to other points in the state, in interstate commerce. The court below did not so construe the order, and we do not so construe it. The Railroad Commissoin of Oregon had no power to fix rates for interstate transportation, or any part of it, and we find no ground for the conclusion that it attempted to do so.

The order must be taken as applicable solely to intrastate transportation. And, in this view, so far as the averments of the bill attack the order as one which by its terms relates to property transported in interstate commerce, they are insufficient to entitle the complainant to relief.

Whether the order governs particular shipments must depend on the facts of each case, that is, upon the question whether the traffic is interstate or intrastate. If it were sought to compel the application of the intrastate rate to goods which were properly to be regarded as moving in interstate commerce, the complainant would have its remedy. But it would be necessary to show the actual conditions and that the order, although valid in its proper operation, was being misapproved with respect to particular transactions. The bill failed to make a case of this sort. Upon this point the court below said: 'If the order be valid, as it is held to be, then all shipments or commerce which are intrastate in character must be controlled by the order; all that are not are not affected by it. If question arises as to any particular shipment or any particular commodity to be moved, or in process of transportation, it might be settled by carrying the matter to the commission; or, if the commission unlawfully exacts the state rate upon interstate traffic, I see no reason why it may not be enjoined in any court of competent jurisdiction. These special cases must necessarily be determined as they arise, as it is impossible by a general decree, to determine in advance what specific commodities and the transportation thereof constitue interstate and what intrastate commerce.' 177 Fed. Rep. 318, 320.

We are of the opinion that the ruling was right.

Assuming that the order applies exclusively to intrastate transportation, the question with respect to asserted interference with interstate

> commerce by reason of the relation of intrastate rates to interstate rates is essentially the same as that presented in the *Minnesota Rate Cases, ante,* p. 352, and the same conclusion must be reached."

So here the contention that this order affects interstate commerce "by reason of the relation of intrastate rates to interstate rates is essentially the same as that presented in the Minnesota Rate Cases * * * and the same conclusion must be reached."

In *L. & N. R. R. Co.* v. *Garrett,* 231 U. S. 298, this court in speaking of an attack upon an order made by the railroad commission of Kentucky, said (p. 319):

> "It is also objected that the order of the Commission constitutes an unwarrantable interference with, and a regulation of, interstate commerce. The questions thus raised cannot be distinguished from those which were considered and decided in The Minnesota Rate Cases, 230 U. S. 352."

The foregoing recent decisions of this court upon the precise point in argument are conclusive. They leave open but one conclusion: The power of the state to regulate charges of common carriers for a service between two points within the state, in connection with traffic that originates and moves wholly within the state, remains unshaken, completely established and undeniable.

II.

THE ORDER UNDER CONSIDERATION DOES NOT CONTRAVENE THE ACT TO REGULATE COMMERCE HEREIN AS TO SHREVEPORT CASE.

The express provision of the Act to Regulate Commerce is that it has no application to transportation "wholly within one state, and not shipped to or from a foreign country, or from or to any state or country aforesaid." Proviso of Section 1.

See:

Missouri Pacific Ry. Co. v. *Larrabee Mills*, 211 U. S. 612, 621.

Minnesota Rate Case, *supra*, page 418.

From the specifications of error it appears that the position taken by the carrier is that this order in fact operates to regulate interstate commerce, because coal might come from other states and pass over the same rails from Galewood to Morton Grove, and, on the assumption that all coal is competitive, this carrier might be forced by commercial conditions to accord to interstate shippers the same rate for its portion of the haul. It is obvious that if this possibility renders the order void, then state authority over rates is extinguished, for there is no part of a railroad where such a situation could not arise. (Minnesota Rate Case, *supra*, page 395.) But this contention does not go to the validity of the order or the power of the state to promulgate it. It goes to its possible commercial effect, and if the effect of the order in the future is to cause a discrimination against interstate shippers, such shippers

will then have the right to complain of the interstate rate and alleged discrimination to the Interstate Commerce Commission. This is the effect of the decision of this court in *Houston, East and West Railway Co.* v. *United States*, 234 U. S. 342.

There the validity of an order of the Interstate Commerce Commission was attacked on the ground that it exceeded the authority of that commission. The Commission found that the carriers operating in Texas unjustly discriminated against Shreveport, Louisiana, by maintaining rates within the State of Texas lower than the rates to common points from Shreveport. The lower intrastate rates were compelled by an order of the Railroad and Warehouse Commission of Texas. The interstate rates, with which the state rates conflicted, were fixed by the federal commission. No one in that case claimed that the order of the Texas board was void. This court held that the Interstate Commerce Commission had the power and jurisdiction to adjudge and remove an undue discrimination against interstate traffic resulting from intrastate rates. This court said (p. 357):

> "Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier and subject to the authority of the states, or of the agencies created by the states. This was the question recently decided by this court in the *Minnesota Rate Cases, supra.*"

The decision in the *Shreveport case* was foreshadowed in the opinion of this court in the *Minnesota rate cases.* At page 419 of that opinion this court states that in the event the state by the exer-

cise of its power of regulation gives an undue or unreasonable preference or advantage to a point inside the state as against a locality outside the state, it would be a matter "primarily for the investigation and determination of the Interstate Commerce Commission and not for the courts. * * * In the present case there has been no finding by the Interstate Commerce Commission of unjust discrimination violative of the act; and no action of that body is before us for review."

So in the case at bar, there has been no finding by the Interstate Commerce Commission that the rate of 20 cents a ton on coal from Galewood to Morton Grove causes an unjust discrimination against interstate shippers.

This court has declined to accede to the proposition that the power of the state to regulate rates extends only to points in the State where there is no competition with traffic under interstate rates, or that the power of the State to regulate rates can be exercised only in prescribing rates on an equal or higher basis than those that are fixed by the carrier for interstate transportation. (The Minnesota Rate Cases, 230 U. S., at page 417.)

There is, of course, nothing to prevent the carrier giving to shippers of coal in other states the same rate on their coal when hauled from Galewood to Morton Grove as the state Commission has found just and reasonable and prescribed for Illinois coal. It will be presumed that the rates fixed by the State Commission are reasonable and just, and if in the future this carrier accords to shippers located outside of Illinois the same rate for the carriage of

their product from Galewood to Morton Grove, it will be doing nothing more than that which under the law and in fairness it should do, namely, accord them a just and reasonable rate.

III.

THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN POEHLMANN BROS. COMPANY V. CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, 30 I. C. C. REP. 89.

Specification of Error No. 8 filed by the plaintiff in error in this case refers to the decision of the Interstate Commerce Commission on a complaint filed by Poehlmann Bros. Company against the Chicago, Milwaukee & St. Paul Railway Company. That decision and order are not in the record in this case, and this court has no means of judicially knowing the substance or effect of the order. While between the same parties, it is another case, and the proceedings therein are not a matter for judicial notice so that they can be pleaded now in argument to affect or invalidate the order here attacked.

Cantrell v. *Seaverns*, 168 Ill. 165.
Streeter v. *Streeter*, 43 Ill. 155.

In Wigmore on Evidence, Volume 4, Section 2579, page 44, the rule is stated:

> "Courts will not take judicial notice of any legal proceedings other than those transacting at the moment in its presence."

But aside from the fact that the order of the Interstate Commerce Commission is not in evidence in this case and no part of this record, it is a fact which

will be found on examination of the decision in that case (30 I. C. C. Rep. 89) that there is no basis for the contention that the order of the State Commission here involved conflicts with the order of the Interstate Commerce Commission.

The case before the Interstate Commerce Commission involved rates on coal from Pennsylvania, Maryland, Ohio and Indiana to Morton Grove. The complaint was dismissed because the Chicago, Milwaukee & St. Paul Railway Company was the only party defendant and the Commission held that the traffic involved was through traffic, and other carriers, necessary parties, were vitally affected, the Commission saying (30 I. C. C. Rep. at page 92):

> "The rate specifically attacked, although a separately established rate of the delivering line, can not be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Some regard must be had to the measure of the through rate as an entirety, and neither the through rate nor the carriers responsible for it and participating in it are before us in this proceeding.
>
> Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rates under attack, *we must refrain from expressing any conclusion upon the reasonableness of either rate.*"

It will thus be seen that the Interstate Commerce Commission did not pass upon the question as to what is a reasonable rate from Galewood to Morton Grove, either as a separately established charge, or as a factor in a through rate, applicable to the movement of coal from points in other states.

The federal order was purely negative. It was similar to the dismissal of a bill in equity for want of necessary parties. It adjudicated nothing.

It was argued by the learned counsel for the plaintiff in error before the Supreme Court of Illinois that the order of the Illinois Board conflicted with the order of the Interstate Commerce Commission. Touching that contention the Supreme Court of Illinois said, 268 Ill. 49, 56:

> "(4) Counsel for appellant say that the same complaint was made by the Poehlmann Bros. Company to the Inter-state Commerce Commission, which upheld the forty-cent rate and dismissed the complaint, and a copy of the opinion of that Commission is included in the argument. Counsel are evidently mistaken. The Poehlmann Bros. Company represented to the Inter-state Commerce Commission that a part of the coal used by it came from West Virginia and other sections outside of this state, and complained that the local rate of forty cents from Galewood to Morton Grove was unreasonable. The appellant was the only party defendant, and the Commission said that the comparisons made by the complainant were in respect to through rates; that the traffic in question was through traffic, although the rate between Galewood and Morton Grove was separately established; and that such a rate could not be considered apart from its relationship to the through rate from interstate points of origin. Neither the through rate nor the carriers responsible for it were before the Commission, and therefore it declined to express any opinion upon the reasonableness of the rate, and did not uphold it or decide anything about it."

While it is true that the case before the Board of Railroad and Warehouse Commissioners in Illinois was submitted on substantially the same evidence

as was presented to the Interstate Commerce Commission, nevertheless, the State Board had the right to take its own view of such evidence and to conclude that it was sufficient on which to reduce the local Illinois rate.

Chrisman v. *Miller*, 197 U. S. 313.

Mammoth Mining Company v. *Grand Central Mining Co.*, 213 U. S. 72.

Clipper Mining Co. v. *Eli Mining & Smelting Co.*, 194 U. S. 220.

Likewise the State Commission had the full power and right to consider the rate from Galewood to Morton Grove as a distinct and separate charge and to regulate the same with respect to its reasonableness. The fundamental requirement of the Illinois Law is that rates of common carriers shall be just and reasonable *per se*. The rate from Morton Grove to Galewood was not as to Illinois traffic a segment of a joint through rate. There are no joint through rates from mines in Illinois to Morton Grove. The State Commission found that the rate of 40 cents a ton was separately made by the Chicago, Milwaukee & St. Paul Railroad on its own responsibility, collected for its own service and retained by it, and it was therefore a distinct and separate charge subject to regulation. Manifestly, this was a sound view of the matter. There is in this case no semblance of a conflict between a rate fixed by the State Commission between two points in the state and a rate fixed by the Interstate Commerce Commission for the same two points applicable to interstate traffic.

IV.

THIS RECORD AFFIRMATIVELY SHOWS THAT THE ORDER ATTACHED IS REASONABLE AND JUST.

There is no evidence in this record on which to consider any contention that the rates fixed by the State Commission were confiscatory and that the order takes property without due process of law.

Atlantic Coast Line Railroad Co. v. *Florida*, 203 U. S. 256.

Seaboard Air Line v. *Florida*, 203 U. S. 261.

Northern Pacific v. *North Dakota*, 216 U. S. 579.

Wood v. *Vandalia Railroad*, 231 U. S. 1.

Louisville & Nashville R. R. v. *Garrett*, 231 U. S. 298.

Louisville & Nashville R. R. v. *Finn*, 235 U. S. 601.

Judson on Interstate Commerce, 3d Ed., Section 133.

The assignments of error do not raise the question of confiscation. (Statement of Errors Relied Upon, Transcript, page 49.)

We contend, therefore, that this court will not consider or review the sufficiency of the evidence on which the order here involved was based. However, to prevent any impression that this order was not sustained by substantial evidence, we beg leave to call the attention of the court to the evidence in the transcript.

The rate of 40 cents a ton on coal and on manure from Galewood to Morton Grove, a distance of about

12 miles, was shown to be unreasonable by a comparison with a great number of other rates for similar distances, published by this carrier and other carriers in and around Chicago. (Transcript 31, 36.)

The rate was particularly compared with the rate of 20 cents to Edgewater through a more congested part of Cook County, requiring a haul of practically the same distance as the haul from Galewood to Morton Grove. (Transcript 45.) The rate was also compared with the rate of 60 cents a ton on coal from Chicago to Milwaukee, a distance of about 85 miles. (Transcript 33.) Many other lower rates to nearby points were cited.

The rate on coke from Chicago to Milwaukee via this same carrier is 45 cents a ton. (St. Paul I. C. C. B-1962, page 20, Item 40.) Coke is a commodity of higher value, and requires more of the equipment of the carrier to transport an equal number of tons and the rate on coke is usually about 25 per cent. higher than the rate on soft coal. A rate of 40 cents on coal for 12 miles can not be justified in the face of a rate of 45 cents a ton on coke for 85 miles, the 12-mile haul along the same rails.

The evidence shows that the average rate on coal from shipping points in Illinois and Indiana to Chicago on a ton-mile basis to be approximately 3.5 mills, or less than ½ of a cent per ton per mile. The rate established by the State Commission in this case would yield a revenue of 1.818 cents per ton per mile on coal and a revenue of 2.272 cents per ton per mile on manure. A rate which yields a per-ton-mile revenue as great as these rates can not be said to be unreasonably low.

The evidence shows that the average car of coal weighs 42½ tons. The rate fixed by the State Commission would yield a return of $8.50 per car for the movement from Galewood to Morton Grove. The evidence further shows that a car of manure weighs approximately the same as a car of coal and the movement of a car of manure from Galewood to Morton Grove under the new rate would yield $10.62 per car.

A rate of 40 cents a ton on bituminous coal for a movement of 12 miles is so out of proportion to the usual rates on coal, that it condemns itself as unfair and exorbitant. There are no special or unusual conditions attached to the transportation in question. The conditions are ideal for a low charge. The transfer is made to the tracks of the defendant by the Belt Railway at Galewood. A train is made up for the north, and at Morton Grove cars for defendant in error are set out on its sidings. There are no grades or unusual operating conditions.

The Board of Railroad and Warehouse Commissioners concluded as follows:

> "After a careful investigation of the rates charged by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to other stations on its lines of road in the vicinity of Morton Grove, and also an investigation of the rates charged by other defendant roads in that locality, for similar distance, when compared with the charge made by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove, the Commission believes that said charge of forty cents per net ton to be an unreasonable charge."

In *Louisville & Nashville R. R. Co.* v. *United*

States, 238 U. S., at page 1, this court approved an order of the Interstate Commerce Commission reducing a rate on evidence similar in effect to that which appears in the Transcript in the case at bar. There this court said (p. 15):

> "Giving the widest possible effect to the fact that mere comparison between rates does not necessarily tend to establish the reasonableness of either, it is still true that, when one of many rates is found to be higher than all others, there may arise a presumption that the single rate is high. And when to that is added the fact that some of the comparative and lower rates had been prescribed by the Commission, there was at least a *prima facie* standard which, after allowing for dissimilarity in conditions, might be used along with all the other evidence in order to test the reasonableness of the Nashville rate. No one of those facts was conclusive, for the character of the country through which the two roads had been built might differ. One might run through a level, thickly populated territory, —the other might have steep grades, long tunnels and a roadway expensive to maintain. The capital invested, the traffic hauled, the cost of operation and the earnings might differ, but nevertheless what was shown to be a reasonable rate on one, might, after allowing for the dissimilarity in conditions, earnings and cost, be a factor in determining the reasonableness of the rate on the other. The report in this case shows that the rate-making body had before it much and varied evidence of this character. After considering it as a whole, the Commission found that the $1-rate on coal shipped from the Kentucky mines to Nashville was unreasonable. In the light of these findings we can not say that the facts set out in the report, do not support the order."

The language of this court in *Interstate Com-*

merce Commission v. *Louisville & Nashville R. R.*, 227 U. S. 88, applies here with equal force:

> "The pleadings charged that the new rates were unjust in themselves and by comparison with others. This was denied by the carrier. The Commission considered evidence and made findings relating to rates which the carrier insists had been compelled by competition, and were not a proper standard by which to measure those here involved. The value of such evidence necessarily varies according to the circumstances, but the weight to be given it is peculiarly for the body experienced in such matters and familiar with the complexities, intricacies and history of rate-making in each section of the country."

We respectfully submit that the evidence appearing in the Transcript in the case at bar shows that the rate of 40 cents a ton from Galewood to Morton Grove was unreasonably high.

CONCLUSION.

From the foregoing we conclude and respectfully submit:

1. The claim that the order in question is violative of the Commerce Clause of the Federal Constitution, or the Act to Regulate Commerce, lacks basis in fact or in law.

2. The contention that the order of the State Commission is in conflict with an order of the Interstate Commerce Commission in another case between the same parties, is untenable.

3. It affirmatively appears from the transcript that the order was based upon ample evidence and was in every respect a reasonable and just order.

Respectfully submitted,

M. F. GALLAGHER,
Counsel for Defendant in Error.

APPENDIX.

Sections of "An Act to establish a Board of Railroad and Warehouse Commissioners and prescribing their powers and duties" in force in Illinois at the time of the decision of this case.

Sec. 20. Said Railroad and Warehouse Commission is hereby given jurisdiction over all common carriers within this state.

Sec. 24. It shall be the duty of every common carrier, subject to the provisions of this Act, to provide and furnish such transportation at reasonable rates upon an order made by the Railroad and Warehouse Commission, upon proper application and proper showing of the necessity therefor, upon a hearing before said commission.

Sec. 31. The commission are hereby empowered and authorized to hear and determine all questions arising under this Act, upon giving due notice to all persons, individuals or corporations interested therein, and to enter an order in relation thereto.

Sec. 32. The Railroad and Warehouse Commissioners are hereby directed to make for each of the common carriers doing business in this state, as soon as practicable, upon giving due notice to all parties interested therein, and after a hearing in relation thereto, a schedule of reasonable maximum rates or charges, classification, rules and regulations, for the transportation of persons or property on or by each of said common carriers, between points wholly

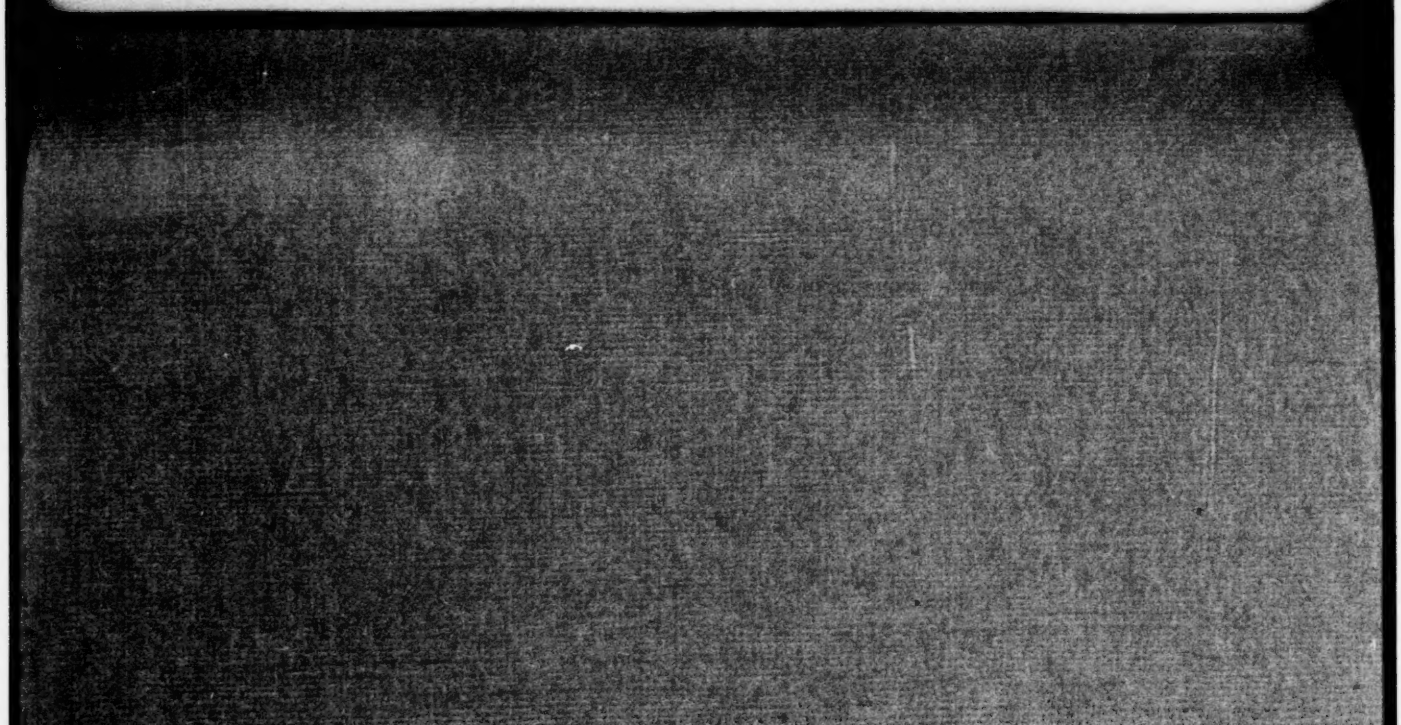
within this state; and said schedule shall in all suits brought against such common carriers, wherein is in any way involved the charges of any such common carriers for the transportation of any person or property, or unjust discrimination, shall be deemed and taken in all courts of this state as *prima facie* evidence that the rates therein affixed are reasonable maximum rates and charges for the transportation of persons and property upon the common carriers for which said schedules may have been respectively prepared. Said commissioners may, from time to time, as often as circumstances require, change and revise said schedules. It shall be proper for said commissioners, either upon their own initiative or upon complaint, to enter upon a hearing for the purpose of investigating the necessity of any such revision. When any schedule shall have been made or revised as aforesaid, it shall be the duty of said commissioners to have the same printed by the state printer, under the contract governing state printing, and said commissioners shall furnish two copies of said printed schedule to the president, general mananger, general superintendent or receiver of each common carrier doing business in this state. All such schedules heretofore or hereafter made shall be received and held in all suits as *prima facie*, the schedules of said commissioners without further proof than the production of the schedules desired to be used as evidence with a certificate of the Railroad and Warehouse Commissioners that the same is a true copy of a schedule prepared by them for the carrier therein named. And every such common carrier so receiving any such schedule from said Railroad and Warehouse Commissioners, shall cause

same to be plainly printed and copies for the use of the public shall be kept in every depot, station or office of such carrier where passengers or property, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. Such schedules shall include and contain not only the rates, fares or charges to be charged, collected or received for the transportation of persons or property between points wholly within the State of Illinois, but also shall state separately all terminal charges, storage, icing charges or other charges which said Railroad and Warehouse Commissioners may require, or privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates, fares or charges of the value of the services rendered to the passenger, shipper or consignee: *Provided,* nothing in this section or Act shall be construed to repeal an Act to establish and regulate the maximum rate of charges for the transportation of passengers by corporations or companies operating and controlling railroads in part or in whole in this state and to provide penalties for the violation of the provisions thereof, and repealing all Acts and parts of Acts in conflict therewith, approved May 27, 1907, in force July 1, 1907.

Sec. 35. Any party to any proceedings before this commission, or any party affected by any order thereof, may appeal to the Circuit Court of Sangamon County at any time within 20 days after service of a copy of such order on the parties of record in said proceedings. The party taking such an appeal

shall file with the secretary of said commission at the office of said commission in Springfield, Illinois, written notice of said appeal. The commission, upon the filing of such notice of appeal, shall, within five days thereafter, file with the clerk of said Circuit Court of Sangamon County, Illinois, a certified copy of the pleadings and order appealed from. The party serving such notice of appeal shall, within five days after the service of said notice upon said commission, file a copy of said notice with proof of service with the clerk of said court to which such appeal is taken, and thereupon said Circuit Court shall have jurisdiction over said appeal and the same shall be entered upon the records of said Circuit Court and shall be tried therein according to the rules relating to the trial of chancery suits so far as the same are applicable. The Railroad and Warehouse Commission shall be designated as complainant in said Circuit Court, and the common carrier or warehouseman as defendant; no further pleadings than those already filed before the commission shall be necessary. Such order made by said commission shall be *prima facie* evidence of the matters therein stated, and the order shall be *prima facie* reasonable, and the burden of proof upon all issues raised by the appeal, shall be on the appellant. If said court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed and the order enforced as provided by law; otherwise it shall be vacated and set aside. If an appeal is not taken, such order shall become final and it shall thereupon be the duty of the carrier or warehouseman affected to comply therewith. All orders from which no appeal is taken, as provided by law,

shall be deemed to be in full force and effect for all purposes from the time when the right to appeal from such order expires. When no appeal is taken from an order, as herein provided, parties affected by such order shall be deemed to have waived the right to have the merits of said controversy reviewed by a court and there shall be no trial of the merits of or re-examination of the facts of any controversy in which such order was made by any court to which application may be made for a writ to enforce the same. Appeals from all final orders and judgments entered in review by the said Circuit Court of the action of the commission, shall go directly to the Supreme Court, and shall be governed by the rules applying to chancery cases appealed to said Supreme Court.



SUPREME COURT OF THE UNITED STATES.

No. 148.—October Term, 1916.

Chicago, Milwaukee & St. Paul Railway Company, Plaintiff in Error, *vs.* The State Public Utilities Commission of Illinois.	In Error to the Supreme Court of the State of Illinois.

[January 8, 1917.]

Mr. Justice McKenna delivered the opinion of the Court.

Error to review a judgment of the Supreme Court of Illinois sustaining an order of the State Public Utilities Commission made in a proceeding brought by Poehlmann Bros. Company against plaintiff in error, here called the railway company.

Poehlmann Bros. Company is an Illinois corporation, engaged in growing and selling flowers and has its green house at Morton Grove, Cook County, Illinois, a station on the railway company's line, three miles northeast of Chicago. Poehlmann Bros. Company uses in its green house about 30,000 tons of coal each year, 95% of which is mined in Illinois, and 500 cars of manure which comes from places in and around Chicago. The coal and manure move to Morton Grove over the railway which receives them at Galewood, a station inside of Chicago.

The distance from Galewood to Morton Grove is about 12 miles and is the haul involved in this case. There are no joint or through rates on coal to Morton Grove from points in Illinois or from points in other States, the rate from Galewood to Morton Grove being a separate rate.

The rates on cars of coal to Chicago vary according to point of origin, but in all cases the charge of the railway company from Galewood to Morton Grove is 40 cents a ton and is published as such, for which the railway company is alone responsible.

July 18, 1913, Poehlmann Bros. Company filed a petition with the Warehouse Commission of Illinois, predecessor of defendant in error, charging that such rate of 40 cents a ton on coal and

manure from Galewood to Morton Grove was injust and unreasonable. After a hearing the commission so found and that 20 cents a ton on coal and 25 cents on manure were just and reasonable rates and should be put into effect by the railway company.

The order was affirmed by the Circuit Court of Sangamon County and subsequently by the Supreme Court of the State. 268 Ill. 99.

The error assigned against the order of the commission and the judgment sustaining it is that so far as the order relates to coal, the rates on manure not being involved, it violates the commerce clause of the Constitution of the United States in that: (1) The order assumes to regulate a feature of commerce in which interstate and intrastate commerce are commingled and after jurisdiction of that feature had been taken by the Interstate Commerce Commission, and regulates such feature of commerce differently from and inconsistently with the regulation of the Interstate Commerce Commission. (2) It requires the railway company to discriminate against localities outside of Illinois and give preference to those inside of the State in the charges that the company makes for the same service. (3) It violates § 3 of the Interstate Commerce Act as amended by requiring the company to give unreasonable preference and advantage to producers and shippers of coal in the State and subject those outside of the State to unreasonable prejudice and disadvantage by obliging the company to charge a less rate for the transportation of coal in car-load lots between specified points on its rails when the coal originates within the State than it is lawfully permitted to charge and does charge for the same service on interstate shipments of coal. (4) It violates § 6 of the Interstate Commerce Act as amended by requiring the railway company to charge a less compensation on car loads of coal between certain points named in tariffs on file with the Interstate Commerce Commission than the rates and charges specified in such tariffs. (5) It violates § 13 of the Interstate Commerce Act by disregarding the right of the railway company to have the Interstate Commerce Commission investigate any complaint of the railroad commission of any State and obtain such relief as the complaint might merit. (6) It violates § 15 of the Interstate Commerce Act which gives the Interstate Commerce Commission power over through rates and joint rates and transportation participated in by two or more carriers, the order under review seeking to

regulate one factor of such through or joint rate without regard to the other. (7) The order is unreasonable and unlawful in that the commission, without finding the through rate excessive or discriminatory or having facts before it on which to make such finding, made the order to reduce solely for the benefit of Illinois shippers and producers, the transportation charges being a factor of the transportation service involved that is common to interstate and intrastate commerce and over which factor the Interstate Commerce Commission had previously assumed jurisdiction.

The case, we think, is in small compass, although on its face and in the argument of counsel for plaintiff in error it concerns such relation between state and interstate rates as to make the order an interference with the latter. The facts remove the order from such effect. The coal that the order regulates has its point of shipment and its point of destination in Illinois and was for transportation for 12 miles on the lines of the railway company in the State. But counsel say that the rate for those 12 miles, that is for the haul from Galewood to Morton Grove, is part of the through rate from the coal-producing districts to Galewood, which is a station in Chicago, that such producing districts may be inside or outside of the State, and that the rate, therefore, may be a part of interstate commerce as well as intrastate commerce. There hence comes into the case, counsel contends, "a feature of commerce in which interstate and intrastate commerce are commingled" and that, the interstate element dominating, the state commission had no jurisdiction to make its order, and it is asserted that discriminations and preferences between shippers and localities will result from it.

The contention based upon an interstate commerce element in a rate, that is, the relation of interstate and intrastate rates and their reciprocal effect, was at one time quite formidable, but since the *Minnesota Rate Cases*, 230 U. S. 352, its perplexity arising from a conflict of powers has been simplified. In those cases it was decided that there is a field of operation for the power of the State over intrastate rates and the power of the Nation over interstate rates. In other words, and in the language of Mr. Justice Hughes, who delivered the opinion of the court, "The fixing of reasonable rates for intrastate transportation was left where it had been found; that is, with the States and the agencies created by the States to deal with that subject, *Missouri Pacific Ry. Co.* v. *Larabee Mills* 211 U. S.

612," until the authority of the State is limited "through the exertion by Congress of its paramount constitutional power where there may be a blending of interstate and intrastate operations of interstate carriers." But it was decided that Congress had not exerted its power by the enactment of the Interstate Commerce Act.

It is, however, said that the Interstate Commerce Commission had assumed jurisdiction of the rates at the instance of Poehlmann Bros. Company and had rendered a decision sustaining the rates that the order under review adjudges unreasonable.

There was such a complaint and the testimony taken was introduced in the present case. But the complaints are different. That before the Interstate Commerce Commission concerned coal from West Virginia. The complaint in the present case concerns coal shipped from a place in Illinois to another place in Illinois, the latter place being Morton Grove, and the rate to it from Galewood being involved. The testimony taken before the Interstate Commerce Commission happened to have material relevancy to such rate and hence was admitted in evidence. The rulings were different. It was proper for the Interstate Commerce Commission to consider the rate as part of a through rate from points outside of the State. It was equally proper for the state commission to consider it as part of the intrastate haul, and we do not think the rates were so related as to exclude the exercise of jurisdiction by the state commission.

The order of the Interstate Commerce Commission is not in the record. It is, however, quoted in the briefs of counsel, and it appears therefrom that neither the through rate nor the carriers responsible for and participating in it were before the commission. The commission said: "Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rates under attack, we must refrain from expressing any conclusion upon the reasonableness of either rate."

But a relation is asserted between the state and interstate haul because it is said to be manifest that the order of the state commission gives commercial advantages to shippers and producers of coal in Illinois over shippers and producers outside of the State. But there is nothing in the record that justifies the confidence of the assertion. There are too many factors to be considered for such off-hand declarations to be accepted. Some relation we may admit between the state and interstate service, but the evidence does not

bring it within that certainty and precision of influence that induced the decision in *Houston & Texas Ry.* v. *United States*, 234 U. S. 342, but leaves it controlled by the *Minnesota Rate Cases*, *supra*; *Oregon R. R. & Nav. Co.* v. *Campbell, et al.*, 230 U. S. 525, and *L. & N. R. R. Co.* v. *Garrett*, 231 U. S. 298. Therefore, the order is not subject to the charges against it and §§ 3, 13 and 15 of the Interstate Commerce Act have no application.

The motion to dismiss is denied. The judgment is

Affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.